

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

May 18, 1975

Dear Mr. Halperin:

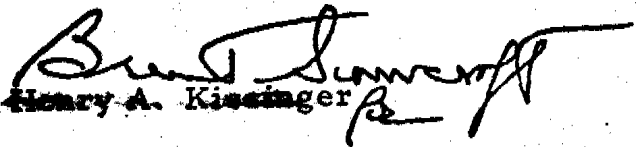
I have your letter of April 10, 1975, appealing the denial of your request for the 1952 Presidential Memorandum on the National Security Agency.

We have carefully examined the document in the light of your request, and have determined that it is exempt from compulsory disclosure under 5 U. S. C. 552 (b) (1). Moreover, the document is classified and exempt from the General Declassification Schedule pursuant to the provisions of Section 5 (B) (2) and (3) of Executive Order No. 11652 (March 8, 1972), as amended.

After consultation with other agencies having an interest in the subject matter of the document, we have also determined that the document is exempt from compulsory disclosure under 5 U. S. C. 552 (b) (3). In this connection, we refer you to Section 6 (a) of Public Law 86-36 (73 Stat. 64, May 29, 1959); 18 U. S. C. 798 (a) (3); and 50 U. S. C. 403 (d) (3).

As you know, you have the right to seek judicial review of this denial of your request under the provisions of 5 U. S. C. 552.

Best regards,


Henry A. Kissinger

Mr. Morton H. Halperin
122 Maryland Avenue, N. E.
Washington, D. C. 20002

NSS review completed

NSA review completed

~~TOP SECRET/XGDS~~

MEMORANDUM

NATIONAL SECURITY COUNCIL

NSA review completed

May 13, 1975

MEMORANDUM FOR: HENRY A. KISSINGER

THRU BRENT SCOWCROFT

FROM: JEANNE W. DAVIS *JWD*
RICHARD OBER *RO*

SUBJECT: Appeal under the Freedom of Information Act for the Declassification of a 1952 Presidential Memorandum on the National Security Agency

An appeal to Head of Agency has been submitted by Mr. Morton Halperin under the Freedom of Information Act for the declassification of a 1952 Presidential Memorandum concerning the National Security Agency. An appeal to the Archivist for the same document was recently denied after consultation with and concurrence from the Departments of State and Defense, the National Security Council, the Central Intelligence Agency and the National Security Agency. The Justice Department has agreed to defend this denial. In addition, you have denied Mr. Halperin's appeal for all the NSCIDs issued since 1948, including the December 29, 1952 version of NSCID No. 9 on communications intelligence which is taken almost verbatim from the requested Presidential Memorandum. Therefore, in conformance with the position already adopted on this matter, a letter for your signature denying Mr. Halperin's appeal is attached at Tab I.

According to the Freedom of Information Act procedures, a response on Mr. Halperin's appeal must be sent by Tuesday, May 27, 1975. The twenty-day period allowed for reviewing an appeal ends May 13, 1975 and we have notified Mr. Halperin of the ten-day extension permitted under the law.

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(Unclassified when separated from Tab B)

BACKGROUND

In a letter dated March 26, 1975 (Tab A), Mort Halperin requested under the Freedom of Information Act the release of a 1952 Presidential Memorandum concerning the National Security Agency and communications intelligence activities (Tab B). A response was sent to Mr. Halperin on April 9, 1975 (Tab C) denying his request on the basis that the Presidential Memorandum was exempt from declassification under Section (b) (1) of the amended Freedom of Information Act. This exemption is allowed for material specifically required by Executive Order to be kept secret in the interest of national defense or foreign policy. At the same time, Mr. Halperin was advised of his right to appeal.

In a letter dated April 10, 1975, Mr. Halperin submitted an appeal for the declassification of the 1952 Presidential Memorandum (Tab D). He indicates in his letter that he will initiate court action if his appeal is denied.

During this same period, a request for the same document was submitted by Mr. Louis Kruh to the Archivist of the United States (Tab E). After consultation with the Departments of State and Defense, the National Security Council, the Central Intelligence Agency and the National Security Agency, the request was denied on the basis of the exemption provided under Section (b) (1) of the amended Freedom of Information Act (Tab F). This denial was appealed by Mr. Kruh and representatives of the concerned departments and agencies met for consultations on the appeal. Mr. Kruh's appeal was denied (Tab G) on the basis of Section (b) (3) of the amended Freedom of Information Act which covers matters "specifically exempted from disclosure by statute." Public Law 86-36 (Section 6), 18 U. S. C. 798 (a) (3) and 50 U. S. C. 403 (d) (3) were cited as applicable statutory authority (see letter at Tab G).

CONSIDERATIONS

The appeal submitted by Mr. Kruh to the Archivist for the same 1952 Presidential Memorandum has been denied and the Department of Justice has agreed to defend that denial.

On April 30, 1975, General Scowcroft signed a letter on your behalf denying Mr. Halperin's appeal for the declassification of all NSCIDs issued since 1948 (Tab H). This denial included the December 29, 1952 version of NSCID No. 9 on communications intelligence which was taken directly from the 1952 Presidential Memorandum on communications intelligence activities.

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The proposed letter to Mr. Halperin has been cleared with Philip Buchen, the Department of Justice, the Department of Defense and the National Security Agency. In response to our request for clearance (Tab I), Mr. Buchen recommends in his reply (Tab J) that, in view of pending lawsuits brought by Mr. Halperin against you, General Scowcroft sign the denial letter on your behalf as was done in response to the three earlier Halperin requests.

RECOMMENDATION

That General Scowcroft sign "Brent Scowcroft for" on the letter at Tab I denying Halperin's appeal for the release of the 1952 Presidential Memorandum concerning the National Security Agency.

APPROVE _____

DISAPPROVE _____

OTHER _____

TABS

- A - Halperin Request (March 26, 1975)
- B - Presidential Memorandum on NSA (October 10, 1952)
- C - Response to Halperin (April 9, 1975)
- D - Halperin Appeal (April 10, 1975)
- E - Kruh Request to Archivist (February 18, 1975)
- F - Denial of Kruh's Request (March 19, 1975)
- G - Denial of Kruh's Appeal (April 25, 1975)
- H - Denial of Halperin Appeal for NSCIDs (April 30, 1975)
- I - Memorandum to Philip Buchen (May 6, 1975)
- J - Memorandum from Philip Buchen (May 12, 1975)

TOP SECRET/XGDS

(Unclassified when
separated from Tab B)

I

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

Dear Mr. Halperin:

I have your letter of April 10, 1975, appealing the denial of your request for the 1952 Presidential Memorandum on the National Security Agency.

We have carefully examined the document in the light of your request, and have determined that it is exempt from compulsory disclosure under 5 U. S. C. 552 (b) (1). Moreover, the document is classified and exempt from the General Declassification Schedule pursuant to the provisions of Section 5 (B) (2) and (3) of Executive Order No. 11652 (March 8, 1972), as amended.

After consultation with other agencies having an interest in the subject matter of the document, we have also determined that the document is exempt from compulsory disclosure under 5 U. S. C. 552 (b) (3). In this connection, we refer you to Section 6 (a) of Public Law 86-36 (73 Stat. 64, May 29, 1959); 18 U. S. C. 798 (a) (3); and 50 U. S. C. 403 (d) (3).

As you know, you have the right to seek judicial review of this denial of your request under the provisions of 5 U. S. C. 552.

Best regards,

Henry A. Kissinger

Mr. Morton H. Halperin
122 Maryland Avenue, N. E.
Washington, D. C. 20002

A

MORTON H. HALPERIN

122 MARYLAND AVENUE, N. E.

WASHINGTON, D. C. 20002

(202) 544-5380

March 26, 1975

**Mrs. Jeanne Davis
Staff Secretary
Room 374
National Security Council
Old Executive Office Building
Washington, DC 20506**

Dear Mrs. Davis:

This is a request under the Freedom of Information Act as amended (5 U.S.C. §552).

I write to request a copy of the 1952 Presidential Memorandum establishing the National Security Agency. I enclose a letter from the Department of Defense referring me to you in connection with this request.

(more)

Mrs. Jeanne Davis
National Security Council
March 26, 1975
Page Two

As you know, the amended Act provides that if some parts of a file are exempt from release that "reasonably segregable" portions shall be provided. I therefore request that, if you determine that some portions of the requested information are exempt, you provide me immediately with a copy of the remainder of the file. I, of course, reserve my right to appeal any such deletions.

If you determine that some or all of the requested information is exempt from release, I would appreciate your advising me as to which exemption(s) you believe covers the information which you are not releasing.

I am prepared to pay costs specified in your regulations for locating the requested files and reproducing them.

As you know, the amended Act permits you to reduce or waive the fees if that "is in the public interests because furnishing the information can be considered as primarily benefiting the public." I believe that this request plainly fits that category and ask you to waive any fees.

If you have any questions regarding this request, please telephone me at the above number.

As provided for in the amended Act, I will expect to receive a reply within 10 working days.

Sincerely yours,



Morton H. Halperin

mhh/cmm

B

[TS - HK 1473]

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24 October 1952

MEMORANDUM FOR: The Secretary of State
The Secretary of Defense

SUBJECT: Communications Intelligence Activities

The communications intelligence (COMINT) activities of the United States are a national responsibility. They must be so organized and managed as to exploit to the maximum the available resources in all participating departments and agencies and to satisfy the legitimate intelligence requirements of all such departments and agencies.

I therefore designate the Secretaries of State and Defense as a Special Committee of the National Security Council for COMINT, which Committee shall, with the assistance of the Director of Central Intelligence, establish policies governing COMINT activities, and keep me advised of such policies through the Executive Secretary of the National Security Council.

I further designate the Department of Defense as executive agent of the Government, for the production of COMINT information.

I direct this Special Committee to prepare and issue directives which shall include the provisions set forth below and such other provisions as the Special Committee may determine to be necessary.

1. A directive to the United States Communications Intelligence Board (USCIB). This directive will replace the National Security Council Intelligence Directive No. 9, and shall prescribe USCIB's new composition, responsibilities and procedures in the COMINT fields. This directive shall include the following provisions:

a. USCIB shall be reconstituted as a body acting for and under the Special Committee, and shall operate in accordance with the provisions of the new directive. Only those departments or agencies represented in USCIB are authorized to engage in COMINT activities.

b. The Board shall be composed of the following members:

(1) The Director of Central Intelligence, who shall be the Chairman of the Board.

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- (2) A representative of the Secretary of State.
- (3) A representative of the Secretary of Defense.
- (4) A representative of the Director of the Federal Bureau of Investigation.
- (5) The Director of the National Security Agency.
- (6) A representative of the Department of the Army.
- (7) A representative of the Department of the Navy.
- (8) A representative of the Department of the Air Force.
- (9) A representative of the Central Intelligence Agency.

c. The Board shall have a staff headed by an executive secretary who shall be appointed by the Chairman with the approval of the majority of the Board.

d. It shall be the duty of the Board to advise and make recommendations to the Secretary of Defense, in accordance with the following procedure, with respect to any matter relating to communications intelligence which falls within the jurisdiction of the Director of NSA.

(1) The Board shall reach its decision by a majority vote. Each member of the Board shall have one vote except the representatives of the Secretary of State and of the Central Intelligence Agency who shall each have two votes. The Director of Central Intelligence, as Chairman, will have no vote. In the event that the Board votes and reaches a decision, any dissenting member of the Board may appeal from such decision within 7 days to the Special Committee. In the event that the Board votes but fails to reach a decision, any member of the Board may appeal within 7 days to the Special Committee. In either event the Special Committee shall review the matter, and its

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determination thereon shall be final. Appeals by the Director of NSA and/or the representatives of the Military Departments shall only be filed with the approval of the Secretary of Defense.

(2) If any matter is voted on by the Board but -

(a) no decision is reached and any member files an appeal;

(b) a decision is reached in which the representative of the Secretary of Defense does not concur and files an appeal; no action shall be taken with respect to the subject matter until the appeal is decided, provided that, if the Secretary of Defense determines, after consultation with the Secretary of State, that the subject matter presents a problem of an emergency nature and requires immediate action, his decision shall govern, pending the result of the appeal. In such an emergency situation the appeal may be taken directly to the President.

(3) Recommendations of the Board adopted in accordance with the foregoing procedures shall be binding on the Secretary of Defense. Except on matters which have been voted on by the Board, the Director of NSA shall discharge his responsibilities in accordance with his own judgment, subject to the direction of the Secretary of Defense.

(4) The Director of NSA shall make such reports and furnish such information from time to time to the Board, either orally or in writing, as the Board may request, and shall bring to the attention of the Board either in such reports or otherwise any new major policies or programs in advance of their adoption by him.

e. It shall also be the duty of the Board as to matters not falling within the jurisdiction of NSA;

(1) To coordinate the communications intelligence activities among all departments and agencies authorized by the President to participate therein;

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(2) To initiate, to formulate policies concerning, and subject to the provisions of NSCID No. 5, to supervise all arrangements with foreign governments in the field of communications intelligence; and

(3) To consider and make recommendations concerning policies relating to communications intelligence of common interest to the departments and agencies, including security standards and practices, and, for this purpose, to investigate and study the standards and practices of such departments and agencies in utilizing and protecting COMINT information.

f. Any recommendation of the Board with respect to the matters described in paragraph e above shall be binding on all departments or agencies of the Government if it is adopted by the unanimous vote of the members of the Board. Recommendations approved by a majority, but not all, of the members of the Board shall be transmitted by it to the Special Committee for such action as the Special Committee may see fit to take.

g. The Board will meet monthly, or oftener at the call of the Chairman or any member, and shall determine its own procedures.

2. A directive to the Secretary of Defense. This directive shall include the following provisions:

a. Subject to the specific provisions of this directive, the Secretary of Defense may delegate in whole or in part authority over the Director of NSA within his department as he sees fit.

b. The COMINT mission of the National Security Agency (NSA) shall be to provide an effective, unified organization and control of the communications intelligence activities of the United States conducted against foreign governments, to provide for integrated operational policies and procedures pertaining thereto. As used in this directive, the terms "communications intelligence" or "COMINT" shall be construed to mean all procedures and methods used in the interception of communications other than foreign press and propaganda broadcasts and the obtaining of information from such communications by other

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than the intended recipients,* but shall exclude censorship and the production and dissemination of finished intelligence.

c. NSA shall be administered by a Director, designated by the Secretary of Defense after consultation with the Joint Chiefs of Staff, who shall serve for a minimum term of 4 years and who shall be eligible for reappointment. The Director shall be a career commissioned officer of the armed services on active or reactivated status, and shall enjoy at least 3-star rank during the period of his incumbancy.

d. Under the Secretary of Defense, and in accordance with approved policies of USCIB, the Director of NSA shall be responsible for accomplishing the mission of NSA. For this purpose all COMINT collection and production resources of the United States are placed under his operational and technical control. When action by the Chiefs of the operating agencies of the Services or civilian departments or agencies is required, the Director shall normally issue instructions pertaining to COMINT operations through them. However, due to the unique technical character of COMINT operations, the Director is authorized to issue direct to any operating elements under his operational control task assignments and pertinent instructions which are within the capacity of such elements to accomplish. He shall also have direct access to, and direct communication with, any elements of the Service or civilian COMINT agencies on any other matters of operational and technical control as may be necessary, and he is authorized to obtain such information and intelligence material from them as he may require. All instructions issued by the Director under the authority provided in this paragraph shall be mandatory, subject only to appeal to the Secretary of Defense by the Chief of Service or head of civilian department or agency concerned.

e. Specific responsibilities of the Director of NSA include the following:

- (1) Formulating necessary operational plans and policies for the conduct of the U.S. COMINT activities.
- (2) Conducting COMINT activities, including research and development, as required to meet the

* See Public Law 513--81st Congress 1950

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needs of the departments and agencies which are authorized to receive the products of COMINT.

(3) Determining, and submitting to appropriate authorities, requirements for logistic support for the conduct of COMINT activities, together with specific recommendations as to what each of the responsible departments and agencies of the Government should supply.

(4) Within NSA's field of authorized operations prescribing requisite security regulations covering operating practices, including the transmission, handling and distribution of COMINT material within and among the COMINT elements under his operational or technical control; and exercising the necessary monitoring and supervisory control, including inspections if necessary, to ensure compliance with the regulations.

(5) Subject to the authorities granted the Director of Central Intelligence under NSCID No. 5, conducting all liaison on COMINT matters with foreign governmental communications intelligence agencies.

f. To the extent he deems feasible and in consonance with the aims of maximum over-all efficiency, economy, and effectiveness, the Director shall centralize or consolidate the performance of COMINT functions for which he is responsible. It is recognized that in certain circumstances elements of the Armed Forces and other agencies being served will require close COMINT support. Where necessary for this close support, direct operational control of specified COMINT facilities and resources will be delegated by the Director, during such periods and for such tasks as are determined by him, to military commanders or to the Chiefs of other agencies supported.

g. The Director shall exercise such administrative control over COMINT activities as he deems necessary to the effective performance of his mission. Otherwise, administrative control of personnel and facilities will remain with the departments and agencies providing them.

h. The Director shall make provision for participation by representatives of each of the departments and agencies eligible to receive COMINT products in those offices of NSA where priorities of intercept and processing are finally planned.

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i. The Director shall have a civilian deputy whose primary responsibility shall be to ensure the mobilization and effective employment of the best available human and scientific resources in the field of cryptologic research and development.

j. Nothing in this directive shall contravene the responsibilities of the individual departments and agencies for the final evaluation of COMINT information, its synthesis with information from other sources, and the dissemination of finished intelligence to users.

3. The special nature of COMINT activities requires that they be treated in all respects as being outside the framework of other or general intelligence activities. Orders, directives, policies, or recommendations of any authority of the Executive Branch relating to the collection, production, security, handling, dissemination, or utilization of intelligence, and/or classified material, shall not be applicable to COMINT activities, unless specifically so stated and issued by competent departmental or agency authority represented on the Board. Other National Security Council Intelligence Directives to the Director of Central Intelligence and related implementing directives issued by the Director of Central Intelligence shall be construed as non-applicable to COMINT activities, unless the National Security Council has made its directive specifically applicable to COMINT.

/s/ HARRY S. TRUMAN

TOP SECRET

C

NATIONAL SECURITY COUNCIL

WASHINGTON, D.C. 20506

April 9, 1975

Dear Mr. Halperin:

I am writing in response to your letter of March 27, 1975 (D-5), in which you request a copy of the 1952 Presidential memorandum establishing the National Security Agency. The NSC Staff has reviewed your request and has determined that the information contained in this document is exempt from release under Section (b)(1) of the amended Freedom of Information Act.

As you know, this decision may be appealed to Mr. Kissinger, in his role as Assistant to the President for National Security Affairs. Such an appeal should be addressed to me as Staff Secretary of the National Security Council.

Sincerely,



**Jeanne W. Davis
Staff Secretary**

**Mr. Morton H. Halperin
122 Maryland Avenue, N. E.
Washington, D. C. 20002**

D

MORTON H. HALPERIN
122 MARYLAND AVENUE, N. E.
WASHINGTON, D. C. 20002
(202) 544-5380

April 10, 1975

Mrs. Jeanne W. Davis
Staff Secretary
National Security Council
Washington, D.C. 20506

Dear Mrs. Davis:

This is an appeal pursuant to sub-section (a)(6) of the Freedom of Information Act (5 U.S.C. §552).

I have a letter dated April 9, 1975 from you denying my request for the 1952 Presidential Memorandum establishing the National security Agency. This letter indicated that an appeal should be directed through you; this letter constitutes that appeal. I am enclosing a copy of my exchange of correspondence with your agency so that you can see exactly what files I have requested and the insubstantial grounds on which my request has been rejected.

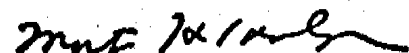
According to the Amended Act, any reasonably segregable portion of a requested record must be made public. On this matter I refer you to the Attorney General's 1974 Freedom of Information Amendments Memorandum, pp. 14-15. In order to deny my request in toto, you must conclude that each and every sentence could be expected to cause damage to the national defense. I find it difficult to believe that this judgment has been reached.

I trust that upon examination of my request you will conclude that the information I have requested is not properly covered by exemption (b)(1) of the amended Act and will make the information promptly available.

As provided for in the Act, I will expect to receive a reply within twenty working days.

If you are unable to order release of the requested information, I intend to initiate a lawsuit to compel its disclosure.

Yours sincerely,



Morton H. Halperin

E

Received NA-i.

FEB 20 1975

February 18, 1975

Mr. James B. Rhoads
Archivist of the United States
General Services Administration
National Archives and Records Service
Washington, D.C. 20408

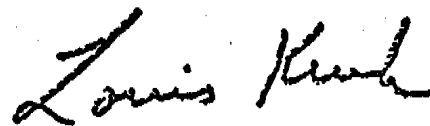
Dear Mr. Rhoads:

The purpose of this letter is to request a copy of President Truman's directive which established the National Security Agency.

I understand this directive is in the form of a memorandum from President Truman to the Secretaries of State and Defense dated October 24th, 1952. It carried a control number A 20707 5/4/54/OSG.

This request is being made under the Freedom of Information Act and its Amendments.

Sincerely yours,



F

MAR 19 1975

Mr. Louis Krub

STAT

Dear Mr. Krub:

This is in response to your letter received at the National Archives on February 20, 1975, in which you requested access under the Freedom of Information Act, as amended, 5 U.S.C. 552, to a memorandum dated October 24, 1952, from President Harry S. Truman to the Secretaries of State and Defense authorizing the establishment of the National Security Agency.

Under Sec. 11, Declassification of Presidential Papers, of Executive Order 11652, Classification and Declassification of National Security Information and Material, the "Archivist of the United States shall have authority to review and declassify information and material which has been classified by a President, his White House Staff or special committee or commission appointed by him and which the Archivist has in his custody at any archival depository, including a Presidential Library. Such declassification shall only be undertaken in accord with . . . (ii) consultation with the Departments having a primary subject-matter interest, and (iii) the provisions of Section 5." To meet the requirements of the Executive order, the National Archives has consulted with the appropriate Departments or agencies to determine whether the document you have requested, which bears a Top Secret classification marking, contains information which if released would damage the National security of the United States, or whether the document may now be declassified without causing damage to the national security. Those Departments and Agencies which were consulted are the Department of State (William G. Byland, Director of Intelligence and Research), the Department of Defense (David O. Cooke, Deputy Assistant Secretary for Administration, Office of the Assistant Secretary of Defense - Comptroller), the Central Intelligence Agency (Robert S. Young, Freedom of Information Coordinator), the National Security Council (Jeanne W. Davis, Staff Secretary), the the National Security Agency (Norman Boardman, Information Officer).

On the basis of these consultations with the agencies having primary subject-matter interest, we have determined that the requested document contains information which has been specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense or foreign policy; and, that the document is properly classified according to both procedural and substantive criteria established by Executive order. The document contains classified information

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which if released would disclose current intelligence methods, and a system, plan, project, or specific foreign relations matter the continuing protection of which is essential to the national security. I must, therefore, deny your request under exemption 1 of the Freedom of Information Act, as amended, which specifies that the Act does not apply to matters that are "(1) (A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order".

If you wish to appeal this denial, you may send a written appeal to the Deputy Archivist of the United States, General Services Administration, (ND), Washington, D.C. 20408. Please mark both the face of the letter and the envelope, "FREEDOM OF INFORMATION APPEAL," in order to expedite your appeal.

Sincerely,



E. G. CAMPBELL
Assistant Archivist
for the National Archives

G

National Archives and Records Service
Washington, DC 20408



APR 25 1975

Mr. Louis Kruh



STAT

Dear Mr. Kruh:

This is in response to your letter received at the National Archives on March 31, 1975, in which you appeal under the Freedom of Information Act the denial made by E. G. Campbell, Assistant Archivist for the National Archives, for access to a memorandum dated October 24, 1952, from President Harry Truman to the Secretaries of State and Defense relating to the National Security Agency.

We have again consulted with the agencies having a primary subject-matter interest in this document. These agencies are: the National Security Council; the Central Intelligence Agency; the National Security Agency; the Department of Defense; and the Department of State.

Having thoroughly considered the opinions offered by these agencies, I must deny your appeal under 5 U. S. C. 552 (b)(3), matters that are "specifically exempted from disclosure by statute."

Section 6(a) of Public Law 86-36 (73 Stat. 64, May 29, 1959) provides that "Except as provided in subsection (b) of this section, nothing in this Act or any other law (including, but not limited to, the first section and section 2 of the Act of August 28, 1935 (5 U. S. C. 654) shall be construed to require the disclosure of the organization or any function of the National Security Agency, of any information with respect to the activities thereof, or of the names, titles, salaries, or number of the persons employed by such agency." Additionally, subsection 798 (a)(3) of title 18, United States Code, prohibits the release of any classified information concerning the communications intelligence activities of the United States or any

foreign government, and subsection 403 (d)(3) of title 50, United States Code, protects information pertaining to intelligence sources and methods from unauthorized disclosure.

In addition, the document you seek remains security classified "Top Secret" at this time. For this reason we also withhold it under 5 U. S. C. (b)(1). The status of the document's security classification is the subject of further administrative review.

This letter represents the final administrative consideration of your request. You have the right to file a civil action in either the Federal District Court for the Eastern District of New York or the Federal District Court for the District of Columbia to seek judicial review of this decision.

Sincerely,

James E. O'Neill

JAMES E. O'NEILL
Deputy Archivist
of the United States

cc:

Director, Freedom of Information Staff
Department of State

Mr. Robert Saloschin
Department of Justice

[Redacted]

STAT

Central Intelligence Agency

Mr. Norman Boardman
National Security Agency

Mrs. Jeanne W. Davis
National Security Council

Directorate for Freedom of Information
Department of Defense

Mr. George Weller
Assistant U. S. Attorney - New York

H

NATIONAL SECURITY COUNCIL

WASHINGTON, D.C. 20506

April 30, 1975

Dear Mr. Halperin:

I have your letter of March 27, 1975 appealing the denial of your request for all National Security Council Intelligence Directives issued since 1948.

We have carefully examined the documents in the light of your request, and have determined that they are exempt from compulsory disclosure under 5 U. S. C. 552 (b) (1) and (3). Also, the documents are classified and exempt from the General Declassification Schedule pursuant to the provisions of Section 5 (B) (2) and (3) of Executive Order No. 11652 (March 8, 1972), as amended.

As you know, you have the right to seek judicial review of this denial of your request under the provisions of 5 U. S. C. 552.

Best regards,


Henry A. Kissinger

Mr. Morton H. Halperin
122 Maryland Avenue, N.E.
Washington, D. C. 20002

MEMORANDUM

NATIONAL SECURITY COUNCIL

May 6, 1975

MEMORANDUM FOR: PHILIP BUCHEN

FROM: JEANNE W. DAVIS SM
RICHARD OBER ^{RO}

SUBJECT: Appeal under the Freedom of Information Act
for the Declassification of a 1952 Presidential
Memorandum on the National Security Agency

The attached memorandum has been prepared for Secretary Kissinger's consideration in making the decision on the FOI appeal for the declassification of a 1952 Presidential Memorandum concerning the National Security Agency.

A letter for Secretary Kissinger's signature denying the appeal for the release of this document is at Tab I. We would like to have your clearance and/or comments on the letter. Because the Justice Department has already agreed to defend the denial of this document in another FOI appeal, we assume that Justice will do the same in this case. We request, however, that you obtain confirmation by telephone of this assumption from Justice and include this in your response to us.

Because the final decision must be sent by Tuesday, May 13, 1975, unless for some unforeseen reason it is necessary to use the ten-day extension, we would appreciate receiving your written response as soon as possible and, in any event, no later than c.o.b. Thursday, May 8, 1975.

TOP SECRET/XGDS
(Unclassified when separated
from Tab B)

THE WHITE HOUSE

WASHINGTON

May 12, 1975

MEMORANDUM FOR:

JEANNE DAVIS

THRU:

PHIL BUCHEN *P.W.B.*

FROM:

BILL CASSELMAN *BC*

SUBJECT:

Appeal under the Freedom of Information Act (from the denial of a 1952 Presidential Memorandum on the National Security Agency)

At your request we have reviewed the draft letter, attached at Tab I of your May 6, 1975, memorandum, rendering a denial under the Freedom of Information Act (FOIA) of the appeal by Mr. Halperin for disclosure of the above-cited document. In addition, as required by Department of Justice regulations, we have sought consultations with the Department's Freedom of Information Act Committee regarding the defense of any lawsuit arising from this denial. Although the constraints of time did not permit the formal convening of the Committee, we are advised that Committee has recently considered another request for the same document and informally concurs in your decision not to release this document under 5 U.S.C. (b)(1) and (3).

With respect to the (b)(3) exemption, we have revised your proposed denial letter to reference appropriate statutes. In addition, we would recommend that you consult with other agencies having a subject matter interest in the document in order to permit the proper invocation of the (b)(3) exemption based on these statutes.

With respect to the (b)(1) exemption, we note that the National Archives and Records Service has denied a similar request for the same document, stating that "[t]he status of the document's security classification is the

subject of further administrative review." After discussion with your office, we understand that this review has been completed and does not alter the initial determination to withhold the document from disclosure under (b)(1). Therefore, we have not alluded to this classification review in the revised denial letter.

Finally, in view of pending lawsuits brought by Mr. Halperin against Dr. Kissinger, we would advise that General Scowcroft sign the denial letter on behalf of Dr. Kissinger. As you know, such a procedure is provided for National Security Council FOIA regulations and is consistent with the treatment of Mr. Halperin's earlier requests.

Enclosures

DRAFT 5/12/75

Dear Mr. Halperin:

I have your letter of April 10, 1975, appealing the denial of your request for the 1952 Presidential Memorandum on the National Security Agency.

We have carefully examined the document in the light of your request, and have determined that it is exempt from compulsory disclosure under 5 U.S.C. 552(b)(1). Moreover, the document is classified and exempt from the General Declassification Schedule pursuant to the provisions of Section 5(B)(2) and (3) of Executive Order No. 11652 (March 8, 1972), as amended.

After consultation with other agencies having an interest in the subject matter of the document, we have also determined that the document is exempt from compulsory disclosure under 5 U.S.C. 552(b)(3). In this connection, we refer you to Section 6(a) of Public Law 86-36 (73 Stat. 64, May 29, 1959); 18 U.S.C. 798(a)(3); and 50 U.S.C. 403(d)(3).

As you know, you have the right to seek judicial review of this denial of your request under the provisions of 5 U.S.C. 552.

Best regards,

Henry A. Kissinger

Mr. Morton H. Halperin
122 Maryland Avenue, N. E.
Washington, D. C. 20002

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

May 12, 1975


Dear Mr. Halperin:

I have your letter dated April 10, 1975 in which you appeal the denial of the release of a 1952 Presidential Memorandum concerning the National Security Agency. Your letter was received on April 15, 1975.

It is necessary to extend the 20-day period for the response to your appeal, as provided for under Section 6 B (iii) of the amended Freedom of Information Act.

I would expect that a response to your appeal will be sent to you on or before Tuesday, May 27, 1975.

Sincerely,



Jeanne W. Davis
Staff Secretary

Mr. Morton H. Halperin
122 Maryland Avenue, N. E.
Washington, D. C. 20002

NATIONAL SECURITY COUNCIL

*Two
Here is the time
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Halperin
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NATIONAL SECURITY COUNCIL

May 9, 1975

MEMORANDUM FOR: JEANNE W. DAVIS

FROM: Richard Ober

**SUBJECT: FOI Appeal by Mort Halperin
for a 1952 Presidential
Memorandum on NSA**

Attached is a proposed letter for your signature informing Mr. Halperin of NSC's intention to use the ten-day extension, if necessary, in responding to his appeal. The deadline for the regular appeal procedure is Tuesday, May 13, 1975. Because an answer has not been received from the White House Counsel's office as yet and in order to allow Secretary Kissinger adequate time for consideration of the appeal, I recommend that the attached letter be sent by tomorrow.

MORTON H. HALPERIN

122 MARYLAND AVENUE, N. E.

WASHINGTON, D. C. 20002

(202) 544-5380

April 10, 1975

Mrs. Jeanne W. Davis
Staff Secretary
National Security Council
Washington, D.C. 20506

Dear Mrs. Davis:

This is an appeal pursuant to sub-section (a)(6) of the Freedom of Information Act (5 U.S.C. §552).

I have a letter dated April 9, 1975 from you denying my request for the 1952 Presidential Memorandum establishing the National security Agency. This letter indicated that an appeal should be directed through you; this letter constitutes that appeal. I am enclosing a copy of my exchange of correspondence with your agency so that you can see exactly what files I have requested and the insubstantial grounds on which my request has been rejected.

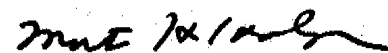
According to the Amended Act, any reasonably segregable portion of a requested record must be made public. On this matter I refer you to the Attorney General's 1974 Freedom of Information Amendments Memorandum, pp. 14-15. In order to deny my request in toto, you must conclude that each and every sentence could be expected to cause damage to the national defense. I find it difficult to believe that this judgment has been reached.

I trust that upon examination of my request you will conclude that the information I have requested is not properly covered by exemption (b)(1) of the amended Act and will make the information promptly available.

As provided for in the Act, I will expect to receive a reply within twenty working days.

If you are unable to order release of the requested information, I intend to initiate a lawsuit to compel its disclosure.

Yours sincerely,



Morton H. Halperin

mhh/cmm

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506


April 9, 1975

Dear Mr. Halperin:

I am writing in response to your letter of March 27, 1975 (D-5), in which you request a copy of the 1952 Presidential memorandum establishing the National Security Agency. The NSC Staff has reviewed your request and has determined that the information contained in this document is exempt from release under Section (b)(1) of the amended Freedom of Information Act.

As you know, this decision may be appealed to Mr. Kissinger, in his role as Assistant to the President for National Security Affairs. Such an appeal should be addressed to me as Staff Secretary of the National Security Council.

Sincerely,


Jeanne W. Davis
Staff Secretary

Mr. Morton H. Halperin
122 Maryland Avenue, N. E.
Washington, D. C. 20002

MORTON H. HALPERIN

122 MARYLAND AVENUE, N. E.

WASHINGTON, D. C. 20002

(202) 544-5380

March 26, 1975

**Mrs. Jeanne Davis
Staff Secretary
Room 374
National Security Council
Old Executive Office Building
Washington, DC 20506**

Dear Mrs. Davis:

This is a request under the Freedom of Information Act as amended (5 U.S.C. §552).

I write to request a copy of the 1952 Presidential Memorandum establishing the National Security Agency. I enclose a letter from the Department of Defense referring me to you in connection with this request.

(more)

Mrs. Jeanne Davis
National Security Council
March 26, 1975
Page Two

As you know, the amended Act provides that if some parts of a file are exempt from release that "reasonably segregable" portions shall be provided. I therefore request that, if you determine that some portions of the requested information are exempt, you provide me immediately with a copy of the remainder of the file. I, of course, reserve my right to appeal any such deletions.

If you determine that some or all of the requested information is exempt from release, I would appreciate your advising me as to which exemption(s) you believe covers the information which you are not releasing.

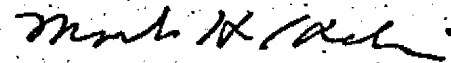
I am prepared to pay costs specified in your regulations for locating the requested files and reproducing them.

As you know, the amended Act permits you to reduce or waive the fees if that "is in the public interests because furnishing the information can be considered as primarily benefiting the public." I believe that this request plainly fits that category and ask you to waive any fees.

If you have any questions regarding this request, please telephone me at the above number.

As provided for in the amended Act, I will expect to receive a reply within 10 working days.

Sincerely yours,



Morton H. Halperin

mhh/cmm