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Note:	Comments on the 1995 Review are on pages 1 - 50, while public comments on the 2005 Review are on pages 51-85 Material released on appeal starts on PDF page 87

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Washington, D.C. 20505

9 August 2010

Reference: F-2009-01576

This is a final response to your 12 August 2009 Freedom of Information Act (FOIA) request for a copy of the comments submitted to the CIA for the 1995 and 2005 decennial reviews of the operational files exemption. We processed your request in accordance with the FOIA, 5 U.S.C. § 552, as amended, and the CIA Information Act, 50 U.S.C. § 431, as amended. Our processing included a search for records as described in our 17 September 2009 acceptance letter existing through the date of that letter.

We completed a thorough search for records responsive to your request and located the two enclosed documents, consisting of 80 pages, which can be released in segregable form with deletions made on the basis of FOIA exemptions (b)(3) and (b)(6). Exemption (b)(3) pertains to information exempt from disclosure by statute. The relevant statute is the Central Intelligence Agency Act of 1949, 50 U.S.C. § 403, as amended, e.g., Section 6, which exempts from the disclosure requirement information pertaining to the organization, functions, including those related to the protection of intelligence sources and methods, names, official titles, salaries, and numbers of personnel employed by the Agency. An explanation of exemptions is enclosed. Please note that we have claimed the (b)(6) exemption for the personal information that has been deleted from these documents for protection of privacy as once a document is released under FOIA, it is releasable to anyone.

Since you are entitled to the first 100 pages free of charge, there is no charge for this material. As the CIA Information and Privacy Coordinator, I am the CIA official responsible for this determination. You have the right to appeal this response to the Agency Release Panel, in my care, within 45 days from the date of this letter. Please include the basis of your appeal.

Sincerely,

A handwritten signature in cursive script that reads "Delores M. Nelson".

Delores M. Nelson
Information and Privacy Coordinator

Enclosures

Comments from the Public Concerning Decennial Review of
CIA Operational File Exemptions

Received as of 1 January 1995

APPROVED FOR
RELEASE DATE:
25-Mar-2010



NATIONAL COUNCIL on PUBLIC HISTORY

Patricia Mooney-Melvin, President
(312)915-6528
FAX (312)915-6448

September 7, 1994

Edmund Cohen
Director
Information Management
Central Intelligence Agency
Washington, DC 20505

Dear Mr. Cohen:

I am writing on behalf of the National Council on Public History in response to the request for comments in the Federal Register concerning the historical value of CIA files designated under the CIA Information Act of 1984.

Although the Openness Initiative of the CIA has increased the amount of information available to the public, the list under "Declassification and Release of CIA Information of Historical Value" includes relatively few documents. The opposition of the historians testifying in 1983 to policies that closed off large bodies of records still is pertinent. Scholars need comprehensive access to records. Preselected groups of documents pulled from the files are not a satisfactory alternative. Instead, this practice raises more questions than provides answers.

The principle that the sensitivity of a record declines with age should be a part of all access policies. A most troubling aspect of the current designation of files to be exempt from the Freedom of Information Act is that there is no consideration of the age of documents. Thus, a 1950 document is as inaccessible as one from 1990, if it falls within one of the exempted categories.

If the CIA is to defend its mission in our rapidly changing world, there needs to be more information available that will allow a meaningful debate on the role of intelligence gathering and analysis for the conduct of foreign policy. Secrecy has hampered the CIA's ability to make a case for the value of intelligence assessments as well as handicapped the quality of analytical studies by insulating those who prepare intelligence assessments from dialog with specialists outside the agency.

The CIA, the American public, and the historical profession all will be well-served if there will be a full scale revision of the operational categories defined in the CIA Information Act of 1984. The categories need to be redefined in such a way to ensure that older records of historical value are accessible to scholars and the public.

Sincerely,

Patricia

President, National Council on Public History

ORGANIZATION OF AMERICAN HISTORIANS

OFFICE OF EXECUTIVE SECRETARY

112 NORTH BRYAN STREET • BLOOMINGTON, INDIANA • 47408-4199

TEL. NO. 812-855-7311



September 9, 1994

Mr. Edmund Cohen, Director
Information Management
Central Intelligence Agency

Washington, DC 20505

Dear Mr. Cohen:

I write on behalf of the Organization of American Historians, a professional association whose twelve thousand individual and institutional members are dedicated to the promotion of teaching and research in American history. The OAH appreciated the opportunity to have a representative participate in your August 29 meeting to discuss the historical value of the subject matter in the CIA's operational files, and I believe that our concerns were well articulated at this meeting.

In response to your August 8 *Federal Register* notice requesting comments, we would like to stress that historians of American foreign relations are thoroughly convinced that the full and accurate account of U.S. foreign policy is dependent on access to CIA operational files. We therefore urge that there be a full-scale revision of the operational categories defined in the CIA Information Act of 1984 in order that older records except for a few personnel files within all these categories will be subject to FOIA requests.

Sincerely,

Arnita A. Jones
Executive Secretary, OAH

AAJ/klh

ORGANIZED 1884 INCORPORATED BY THE CONGRESS 1889



400 A STREET S.E. WASHINGTON, D. C. 20003 | 202-544-2422

September 7, 1994

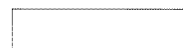
Edmund Cohen
Director, Information Management
Central Intelligence Agency
Washington, DC 20505

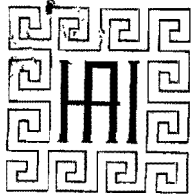
Dear Mr. Cohen:

I write on behalf of the American Historical Association, the nation's largest and oldest professional association for historians. We are concerned about unnecessary restrictions on scholars' access to the immensely valuable records of your agency and urge a full scale revision of the operational categories defined in the CIA Information Act of 1984. Specifically, we are troubled by the continuing resistance of the CIA to making older records subject to FOIA requests. Despite the agency's "openness initiative" in recent years, relatively few documents have been made public, and the historical record remains seriously deficient in regard to the role of intelligence gathering and analysis for the conduct of foreign policy. For example, the CIA's declassification refusals have undermined the State Department's effort to provide a record of American foreign policy through its Foreign Relations of the United States documentary series, even though the volumes cover events over thirty years ago. In reviewing the categories of records exempt from FOIA requests, we urge the CIA to take into account the age of documents and their declining sensitivity and take the appropriate steps to ensure that records of historical value are accessible to scholars and the public.

Please let me know if you have any questions regarding our position.

Sincerely





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September 8, 1994

Mr. Edmund Cohen, Director
Information Management
Central Intelligence Agency
Washington, DC 20505

Dear Mr. Cohen:

In response to your request for comments on the operational file exemptions from the CIA Information Act of 1984 which appeared in the August 8, 1994, *Federal Register*, I would like to communicate my opinion as an historian. As a researcher, I have worked with classified records in both the Department of Energy and the Department of Defense. In addition, as a Professor of History at Rutgers, I recently taught an undergraduate course in the history of modern espionage.

The selected groups of released documents mentioned in the *Register* announcement appear quite interesting in themselves; however, I believe the Agency, the historical community, and national security could benefit from a more forthcoming policy.

I would suggest that the panel of historians, the Archivist, and the Librarian of Congress be reconstituted and reconvened to consider further procedures and categories of release. I would suggest that the panel be widened to include not only more historians and archivists, but experts from other disciplines who are familiar with declassification procedures and problems in other agencies. In particular, I would suggest that the panel should make recommendations toward reviewing agency recommendations of automatic exemption of documents from FOIA. It should consider further recommendations for transfer to NARA, particularly of documents over 30 or 35 years old.

Specific and detailed guidelines, similar to those developed for the Department of Energy regarding the declassification of nuclear information, could be applied in an automatic downgrading procedure. That is, operational files could be *presumed* to be declassifiable if they reach a certain age, unless they contain information pertinent to individual sources or projects still operating. Such information could be regarded as still sensitive.

Cohen, September 8, 1994

2

As many observers have noted, the holding of whole collections away from public and historical use has contributed to a sense of cynicism and to a general distrust of historical information, often feeding completely unfounded conspiracy theories about many events, frequently incorrectly blaming the Agency. In the area of foreign policy, it is extremely difficult for historians and for the public to come to a realistic appraisal of events in the absence of solid information about the role of the Agency. Much of what has been released and what has "leaked" about the Agency's role has helped an informed public come to an understanding that the Agency has been a responsible partner in the conduct of American foreign policy. More detail and a broader policy of opening early operational files would go far to enhance both the Agency's image and producing a realistic appraisal of its successes as well as its failures. However, more than a half-hearted level of release of documents is required to build public confidence in the work of the Agency and in its commitment to clarifying the record.

As noted by the State Department Advisory Committee on Historical Diplomatic Documentation, the Foreign Relations of the United States (FRUS) series is severely flawed by an absence of documents from the Agency pertinent to events in the Kennedy Administration.

For all of these reasons, I would suggest that the panel needs to be reconvened, broadened in its constituency, and that it needs to make further recommendations for a more genuine release of historical operational records.

Sincerely,



Rodney Carlisle
Vice President, History Associates Incorporated
Professor of History, Rutgers University

The Society for Historians of American Foreign Relations

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SHAFR NEWSLETTER

Editor

WILLIAM BRINKER

Tennessee Technological University

September 4, 1994

Edmund Cohen
Director of Information Management
Central Intelligence Agency
Washington, DC 20505

Fax: 703-482-8361

Dear Mr. Cohen:

I am writing as president of The Society of Historians of American Foreign Relations (SHAFR) with regard to the decennial review of CIA files. SHAFR has a membership of over 1600 historians, political scientists, and international relations experts. We teach tens of thousands of students each year and we write about American foreign relations and diplomatic history in popular magazines as well as scholarly journals. We write academic monographs for specialized audiences as well as popular histories for the general public.

As a group we applaud the publicly stated position of the CIA that it will extend greater access to its records and files. Several of the conferences sponsored by the CIA have been useful and informative. The three or four volumes of documents that have been an outgrowth of these conferences have added to the documentary record. The access that State Department historians now have to CIA files in compiling the Foreign Relations series is an especially positive step forward. The CIA Historical Office under the leadership of Ken McDonald has made a serious attempt to reach out to the larger scholarly community.

On the whole, however, CIA actions have not comported with its rhetoric, and the agency has hardly complied with the spirit of the 1984 law calling for openness. Most members of SHAFR do not dispute the need to protect some specially designated operational files and some specialized files related to science and technology, but we do object to the failure of the CIA to provide access to the vast majority of files that are of great historical interest.

The CIA has not presented any plan for the systematic review and possible declassification of entire groups of the agency's records. Although the CIA has released documents related to the Kennedy assassination, Raoul Wallenberg, and the Cuban missile crisis and although it is publishing the basic intelligence estimates of the Soviet Union and selected documents from the early years of the Truman administration, no plan has been submitted regarding the declassification of entire groups of records.

The CIA has not presented any description of its records and of its filing system. It has not done this even for the early years of the agency's existence. The public has absolutely no way to judge the significance of CIA releases of selected materials until it has a full and accurate listing of its records.

When documents have been released, for example, on the Cuban missile crisis, there has not been any enumeration of or citations to the files from which the documents emanated. Publication without citation violates the basic standards of documentary editing. Without provenance, scholars have no way of looking for related materials on the same topic or of checking to see whether the published documents are at all representative.

The CIA has refused to list or make available its finding aids. These aids and indices are indispensable for research.

The CIA official histories that have been declassified in recent years, for example on Walter Bedell Smith, provide almost no information at all about policy and intelligence assessment. They are organizational histories that are welcome, but they are of limited utility. They are scarcely comparable to the official histories of the Joint Chiefs of Staff, of the Office of the Secretary of Defense, and of the Atomic Energy Commission.

The CIA has created an historical advisory committee, but it has met infrequently. There is little evidence to suggest that the agency takes the advice of this committee seriously.

Scholars in general and members of SHAFR in particular welcome the CIA's rhetoric of openness. But we lament that the agency's actions have scarcely lived up to the 1984 law or comported with its public oratory. We fully understand the need to protect intelligence sources and methods, but we feel that vast numbers of files remain unjustifiably closed even after the breakup of the Soviet Union and the end of the Cold War.

The CIA should provide a full and accurate listing of its records and finding aids and it should present a plan for systematic review and declassification. Whenever releasing documents, the agency should provide citations to the files from which those documents emanate. The agency should confer frequently with its advisory committee on historical documentation and heed its advice (much as the State Department does with regard to its own historical committee).

I would be pleased to confer with you on any of the matters discussed above.

Sincerely,

Melvy P. Leffler
President

NATIONAL COORDINATING COMMITTEE
FOR THE PROMOTION OF HISTORY



Administrative Offices: 400 A STREET SE
WASHINGTON, DC 20003(202) 544-2422

Dr. Page Putnam Miller
Director

Members

American Historical Association
Organization of American Historians
Society of American Archivists
Western History Association
Phi Alpha Theta
Southern Historical Association
Society for Military History
Society for Historians of
American Foreign Relations
Society for History Education
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History of Science Society
Society for the History of Technology
American Political Science Association
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Council on Peace Research in History
Immigration History Society
American Association for
State and Local History
Conference Group for
Central European History
Women Historians of the Midwest
Polish American Historical Association
Agricultural History Society
American Library Association-
Library History Round Table
Federation of State Humanities Councils
Society for History in the
Federal Government
National Council on Public History
National Archives Assembly
American Association for the
History of Medicine
Association for Documentary Editing
Midwest Archives Conference
National Association of Government
Archives and Records Administrators
Federation of Genealogical Societies
Oral History Association
Mid-Atlantic Regional Archives Conf.
American Society for Legal History
American Studies Association
Council on America's Military Past
Economic History Association
History Associates, Inc.
Institute for Historical Study
(San Francisco)
New England Archivists
Society of Georgia Archivists
Society for Industrial Archeology
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Historians
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September 7, 1994

Mr. Ed Cohen
Director, Information Management
Central Intelligence Agency
Washington, DC 20505

Dear Mr. Cohen,

I appreciated the opportunity to participate in the August 29 meeting to discuss the historical value of CIA files designated under the CIA Information Act of 1984 and the process the CIA is using to conduct a decennial review of these files.

As I stated at the meeting, historians strongly urge the CIA to make major revisions in the categories of designated files to ensure that older records of historical value are accessible to scholars and to the public. While it was clear that the preliminary reviews being undertaken by the CIA were taking the age of records into consideration, my impression was that these preliminary reviews were recommending that only a few of the 13 subcategories of files listed in the Federal Register be redefined to make older records subject to FOIA requests.

Through its Openness Initiative the CIA has in the last few years made some select information available to the public. But the long list in the Federal Register under "Declassification and Release of CIA Information of Historical Value" includes relatively few documents. At the March, 1994 CIA Conference on the Origin and Development of the CIA in the Administration of Harry S. Truman, Dr. Anna Nelson of American University in a session titled "Research, Records, and Declassification Today" made clear that "the efforts of CIA public relations officials notwithstanding, the Agency has released very few of its records." The CIA collection in the National Archives consists mainly of intelligence estimates, articles from Studies in Intelligence, some documents used in the preparation of official CIA histories, records related to the JFK assassination that were required by law to be deposited at the National Archives, and some selected documents dealing with specific issues. Recent CIA declassification efforts have resulted in two archival boxes of material related to the Cuban Missile Crisis being placed in the National Archives. As Professor Nancy Tucker of Georgetown University pointed out at the meeting, so few documents raise more questions than provide answers.

Director of Central Intelligence, R. James Woolsey, stated before the House Permanent Select Committee on Intelligence on September 28, 1993, that the CIA was undertaking its openness initiatives "to help serious scholars and researchers understand recent history as completely as we can." He noted that "revelations about intelligence required the history of World War II to be rewritten," and suggested that "the information we have may require a rewriting of critical events in the Cold War." For many decades historians engaged in the study of American foreign policy relied primarily on State Department records. Today, the National Security Council, as well as the CIA, have pivotal roles and historians need access to the records of these agencies. Although the CIA may be engaged in an openness initiative, this effort appears only half hearted without providing access to the historical records. A major revision of the categories of exempted records would be a very concrete way to forward the Agency's Openness Initiative.

Historians and representatives of public interest organizations are hopeful that this decennial review will put in place policies that will allow the American people to have access to significant portions of its history that for too long have remained secret. While we were encouraged by your willingness at the August 29th meeting to hear our concerns, we are distressed by the CIA's unwillingness to declassify crucial historical documents for the State Department's Foreign Relations of the United States (FRUS) documentary series of 30 year old documents that provide an authentic and comprehensive presentation of American foreign relations will be distorted. The State Department Advisory Committee on Historical Diplomatic Documentation, which is mandated by law to have oversight over both the publication of FRUS volumes and the State Department's declassification program, noted in its August annual report that the Committee is preparing to contest declassification refusals by the Department of State and the CIA. The Committee has unanimously agreed that there would be serious distortions to the record of American foreign policy with at least two volumes on the Kennedy presidency, if these documents over thirty years old are not included. If the CIA is unwilling to declassify documents for the State Department's historical office, individual scholars feel that their chances for gaining access to older records of historical significance are not very good.

In closing, our primary recommendation is the incorporation of the principle that the sensitivity of a record declines with age be a part of the access policies for most categories of records. By far the most troubling aspect, for historians, of the current designation of files to be exempt from the Freedom of Information Act is that there is no consideration of the age of documents. A 1950 document is as inaccessible as one from 1990, if it falls within one of the exempted categories.

Please feel free to call me if I can assist you in any further way

Sincerely,



Page Putnam Miller, Ph.D.

The Nation.

SUITE 308 110 MARYLAND AVENUE N.E.
WASHINGTON, D.C. 20002
(202) 546-2239

Mr. Edmund Cohen
Director, Information Management
Central Intelligence Agency
Washington, DC 20505

August 15, 1994

Dear Mr. Cohen,

I am writing in response to the request for comments published in the Federal Register (August, 8, 1994, pp. 40339-40341).

I am a journalist, a historian, and author of a forthcoming book on the Central Intelligence Agency. (Blond Ghost: Ted Shackley and the CIA's Crusades, Simon and Schuster). Over the past five years, I have filed dozens of Freedom of Information Act requests with the CIA.

Before addressing the subject of the operational files exemption, I would like to offer some general observations about the CIA's handling of FOIA requests. I have been dismayed by the lack of responsiveness from the FOIA office. During a period in which the CIA has tried to become more open, I have noticed little change in the FOIA office. In the course of doing my book, I found the FOIA office to be uncooperative. When I requested information that had been previously released, it sometimes took over a year for the request to be processed. When I asked for an electronic list of documents previously released by the Agency's FOIA office, the office denied my request. I and the National Security Archive had to threaten a lawsuit to obtain such a list. And I found some responses to FOIA requests hard to believe.

For example, when I asked for materials regarding the tribespeople whom the Agency supported during the "secret war" in Laos during the 1960s, I was told that no such documents could be found. It surprised me that there were no intelligence reports--I was not asking for operational material--on the tribespeople and their leaders. When I asked an employee in the CIA FOIA office about this, he told me that such intelligence reports were probably kept in operational files which did not have to be searched. This suggested that the Agency was abusing the exemption for operational files--and that non-exempt material was improperly being stored beyond the reach of requesters. When I further inquired about this through a lawyer, the CIA maintained that the FOIA office employee had been

misinformed.

I can understand that it is difficult for an intelligence service to respond to outside inquiries for information. But while the CIA has made strides in its historical unit toward greater openness, the atmosphere in the FOIA office has struck me as being overly protective in almost a vindictive manner--to the extent that it is hard to trust the office when it reports it cannot find responsive documents.

As for the operational files, I believe that their exemption has not served FOIA requesters or the public interest. The request for comments notes that response time for FOIA requests is down and attributes that to the exemption. As I stated above, I have not seen evidence of the shortened response time. Moreover, I believe that the exemption keeps under wraps material that should be released and that can be released without damaging our national security or compromising sources and methods.

In the course of my research, I reviewed a list of every document the CIA has released under FOIA. (At the time, the only version of the list the CIA FOIA office would make available was a 4000-page computer print-out which listed the documents in random order.) I saw that much historically valuable material came from operational files. These documents were obviously released before the operational files were exempted. I found cables from stations and memos from station chiefs and other officers that were tremendously useful for historians and that had compromising sections deleted. Cordoning off operational files is a true disservice to history and the public interest.

An examination of the CIA files released in response to the JFK assassination records act confirmed my observations. After this record set was released last year, I spent several weeks going through each of the 60 or so boxes of material in what is called the CIA Segregated File. As you know, these records had to be released with a minimal amount of deletions, and most of these records came from operational files. Again, I found cables to and from CIA stations and hundreds (if not thousands) of memos written by officers of the operations directorate that are of great use for historians. Sources and methods were deleted, as they should be. Still the documents have much historical value. This record collection yielded many more documents useful for my research than all of my dozens of FOIA requests to the CIA.

The release of these records--as well as the work of the historical unit, which has also released operational files (e.g. the Cuban missile crisis documents)--demonstrates

that the Agency can review and make available documents from the operational files.

With the end of the Cold War, the Agency has indeed become more open. The historical unit is to be commended for its important efforts. But true openness allows for Agency outsiders to have a say in what historical materials are to be declassified and released. The only tool for doing so is the FOIA, and to CIA outsiders the FOIA office still seems dominated by an old-guard mentality. With the changes that have occurred in the world and the passage of time, the CIA should change its policy regarding the exemption of operational files. This exemption has undermined drastically the value of FOIA to historians and is a challenge to the spirit of the Act. Perhaps Langley should consider a partial exemption: say, exempting operational files only of the previous ten years.

I am confident that if the Agency wants to proceed with its devotion to openness that it can devise a way to include operational files in FOIA requests and safeguard those secrets that need to remain hidden. A review of previous released material and the JFK records shows that there is room for more openness. History will be better served by ending the operational file exemption, and that is undeniably in the public interest.

Thank you for considering my views. If I can be of any further assistance, feel free to contact me.

Sincerely,

David Corn
Washington editor

National Archives



Washington, DC 20408

September 7, 1994

Director, Information Management
Central Intelligence Agency
Washington, DC 20505

BY FAX

Dear Sir:

This is the National Archives and Records Administration response to your request for comments regarding the historical value of, or other public interest in, the CIA files designated under the CIA Information Act of 1984. Our Military Reference Branch, which is the custodian of CIA records in the National Archives, says that their Agency records are among the most heavily used and will probably continue to be so with the release of subsequent materials.

The Office of Records Administration, responsible for the appraising and scheduling of the disposition of Federal agency records, said that from the description in the Federal Register notice, the records clearly included those of continuing archival value and also, after consultation with the Agency records officer, appeared to be already scheduled. However, since the descriptions were not sufficient for them to relate them to specific scheduled records, they have asked the Agency for further details. Therefore, they limited their comments to the need for scheduling records any that may not already be scheduled.

If you have any questions, please call David G. Paynter at (202) 501-5638.

September 7, 1994

VIA FAX ((703) 482-8361) and VIA MAIL

Edmund Cohen
Director, Information Management
Central Intelligence Agency
Washington, D.C. 20505

RE: Solicitation of public comment on CIA decennial review of operational files exemption, 59 Fed.Reg. 40339 (August 8, 1994)

Dear Mr. Cohen:

Thank you for the opportunity to comment on the Central Intelligence Agency's decennial review, currently underway as required by the CIA Information Act of 1984 (codified at 50 U.S.C. sections 431 and 432), of the record categories in the Directorates of Operations and Science and Technology and the Office of Security that are currently designated as exempt from the search and review requirements of the Freedom of Information Act (FOIA), 5 U.S.C. section 552.

These comments are submitted on behalf of the National Security Archive and the American Civil Liberties Union Center for National Security Studies. The Archive is a non-profit foreign policy research institute and library that extensively uses the FOIA at CIA and other federal agencies to build collections of declassified government agency records documenting key U.S. foreign policy issues. In its work, the Archive regularly faces serious barriers to fully documenting these issues due to the broad range of records now designated as "operational files" exempt from FOIA. The Archive has found that the lack of public access to CIA documents -- especially records now several decades old -- resulting from the current "operational files" designations severely restricts the ability of scholars, researchers, and the public to know about, understand, and learn from events in our nation's past in which CIA played a role. The ACLU is a nonpartisan organization dedicated to the principles of individual liberty embodied in the Constitution that works to ensure that broad access to government information, including the records of intelligence agencies, and other civil liberties are not eroded in the name of national security.

Introduction

The CIA's primary justifications for seeking the "operational files" exemption, as recorded at length in hearing testimony and the 1984 Act's legislative history, were its assurances that by allowing the CIA's director to designate large blocks of files for exemption from the FOIA's search and review requirements no noticeable shrinkage of the amount or type of information releasable to the public would result, responses to FOIA requests would be far quicker, and that declassification review of "operational files" was a waste of time because it never yielded significant useful material. Although the Agency's August 8 Federal Register notice itself recognizes that the purpose of the Act was to expedite the Agency's review of information for release to the public, we believe that the Agency is wrong in asserting that the Act's original purposes have been met. The Agency's FOIA operation, freed of its burden to search for and review "operational files", has not become more efficient but in many cases is far less responsive to public requests than before.

Our comments address two major issues. First, we recommend subject categories and file groups that should be removed from the "operational files" exemption based on their historical value or other public interest in them and the potential for declassifying and releasing to the public significant information contained in those records. Second, we describe the continuing delays and other serious defects in the CIA's FOIA practices that requesters have consistently experienced during the decade since the "operational files" exemption was passed and identify necessary reforms that are long overdue.

I. Records groups recommended for removal from "operational files" exempt status.

CIA witnesses at the congressional hearings prior to the 1984 Act's passage testified that the Agency's need for the "operational files" exemption was based on the premise that FOIA's

"search and review process[] results in an ever-present risk of exposure of sources and methods, and creates a perceived risk on the part of our sources and potential sources . . . At the same time, with this exclusion, the public would receive improved service from the Agency under the FOIA without any meaningful loss of information now released under the Act . . . In the case of records gleaned from operational files, virtually none of this information is released to the requester . . . The public derives little or nothing by way of meaningful information from the fragmentary items or occasional isolated paragraph which is ultimately released from operational files." ¹

We acknowledge that there likely are files in the CIA's Directorates of Operations and of Science and Technology, and Office of Security that require continued secrecy in whole or in part on national security grounds to protect intelligence sources and methods. However, it has become increasingly clear over the past decade that there is much information contained in files now designated as exempt "operational files" which can and should be publicly released.

As the August 8 Federal Register notice soliciting public comment states, many thousands of pages of CIA records have in fact been declassified in whole or in part to reveal much information crucial to understanding past actions and policymaking involving the CIA. Many of these apparently come from record groups that fall under the current "operational files" designation. For example, the initial declassification and release to the public of scores of boxes related to the assassination of President John F. Kennedy, done pursuant to a separate statutory mandate, has resulted in the declassification of hundreds of cables from the CIA stations in Miami and Mexico City, materials that the current "operational files" exemption render wholly unreachable through FOIA. ² Other examples

¹ S. 1324, An Amendment to the National Security Act of 1947, Hearings Before the Select Committee on Intelligence of the United States Senate, 98th Cong., 1st Sess. 6. (Statement of John N. McMahon, Deputy Director of Central Intelligence).

² The CIA's declassification of a handful of Cuban missile crisis records, cited in the Federal Register notice as another example of CIA's declassification efforts reveals the problems inherent in too broadly exempting whole record groups from FOIA's search and review requirements. Although the 100-odd documents declassified in 1992 and published in a book distributed at its conference on the crisis were important and useful, CIA's actions here ended up not being particularly useful to researchers and scholars because the documents were taken out of the context of the files from which they came, their origins

of CIA records relating to once-highly sensitive intelligence operations and special activities but declassified and made publicly available in the recent past, which can serve as models for types of files that can be removed from the "operational files" exemption, include:

- * the Penkovsky case, one of the CIA's most important intelligence operations;
- * covert activities against Cuba in the early 1960s, including details of assassination plots against Castro and their planning;
- * covert political and psychological warfare in western Europe, e.g., Germany; and
- * intelligence findings referring to and drawing on data provided by U-2 and satellite photography.

Thus, it is critically important to take the opportunity provided by this decennial review to limit the number of records and record groups designated as exempt "operational files."

If the review the Agency is undertaking here is to have a useful and lasting impact, it should seek not just to identify particular subjects that should be deemed eligible for FOIA search and review but also establish a set of workable, common-sense standards to apply in identifying record groups for removal from the "operational files" category in the future. The 1984 Act does not limit the Agency's review of designations to once every ten years but only requires that at a minimum a review be done decennially. As the "operational files" designations currently operate, they treat a file or document from 1954 no differently from one generated in 1994. In adopting such standards, we encourage the Agency to take into account the passage of time, recognize that changing circumstances in the world require flexibility in evaluating what needs continued secrecy, and incorporate a variety of review strategies such as bulk declassification. These standards should also require that when documents or record groups are identified for removal from the "operational files" exemption, the declassification review should incorporate markings that indicate where and why information has been redacted, from what agency component and file group the records originated, and provide access to contextual information about the entire set of records from which the document or file group came.

A. Directorate of Operations Files.

While not exhaustive, the following list identifies file groups in the Directorate of Operations that should be removed from the current "operational files" designations of records exempt from search and review:

- * Records related to U.S. government support for non-communist political and social movements in Western Europe, especially during the early years of the Cold War from 1947 through the mid 1950s. This includes material relating to support for anti-communists in the 1948 Italian election, support for the Force Ouvriere in France during the late 1940s, and Psychological Strategy Board activities in the 1950s;

were not identified, nor was the scope and range of materials not declassified for the conference described.

In contrast, in response to a lawsuit brought by the National Security Archive in 1988, the State Department over a period of time declassified and released in whole or in part several thousand documents on the crisis, many of them formerly classified at the "Top Secret/Eyes Only" level and no less sensitive than the documents on the crisis that are still being kept secret by CIA. These declassified State Department documents, now housed at the Archive (and disseminated to the public through an indexed microfiche collection containing over 15,000 pages of documents and a document reader) provide a far more comprehensive view of the event than the CIA's selected declassification of only a few records possibly can.

- * Records related to political and economic warfare against communist regimes in eastern Europe, for example U.S. government support for WIN in Poland;

- * Records related to covert political activities in the third world, including Guatemala in 1954, Iran in 1953, Indonesia during the late 1950s and early 1960s, Syria in 1957, and those records designated by the CIA's Center for the Study of Intelligence for block declassification (for which no timetable for release been publicly announced), including France in the 1940s, Italy during the 1940s and 1950s, North Korea during the early 1950s, Tibet in the 1950s and 1960s, the Bay of Pigs operation in 1961, and the Congo, the Dominican Republic and Laos in the 1960s; and

- * Files currently included in the "Obsolete Category", as described in the August 8 Federal Register notice.

We also strongly recommend that the CIA affirmatively state as part of this review that it will not deem "assassination records" under the President John F. Kennedy Records Collection Act of 1992 to be "operational files" that are exempt from search and declassification review under the terms of the CIA Information Act of 1984.

B. Directorate of Science and Technology files.

We recommend the removal of record groups in the Directorate of Science and Technology from the "operational files" exemption based on their historical value and the likelihood that significant amounts of information can be released after declassification review without harm to national security. Examples of record groups from this directorate that we believe could and deserve to be made eligible for declassification review and public release include records related to the history of the U-2 program, the early years of the reconnaissance satellite programs, and on early efforts to collect data on the Soviet nuclear program.

An instructive perspective on the suitability of files from the Science and Technology Directorate, in particular satellite imagery, for inclusion in FOIA search and review procedures is contained in an observation by Admiral Bobby Ray Inman at a conference a few years ago organized by the Carnegie Endowment for International Peace:

"Some years ago, Hans Mark [then director of the National Reconnaissance Office] and I conspired to declassify U.S. satellite imagery. We believed that making quantities of that imagery selectively available would help inform public debate. We were eminently unsuccessful--not because of the raging policy debated: we might have won that. Instead, lawyers carried the day by rendering the judgement that the Freedom of Information Act, in their opinion, made it very clear that if selected photos were released, then all photographs derived from all systems would become fully subject to the Freedom of Information act process, meaning a laborious and expensive review process for everyone involved." 3

We believe that the CIA should, as it undertakes its review of the current "operational files" designations, adopt Admiral Inman's and Hans Marks' conclusion, based on their extensive experience with imagery, that at least some of these materials can be safely declassified and released to the public based on evaluation of the materials' particular nature and the

3 B.R. Inman, in M. Krepon, et al., Commercial Observation Satellites and International Security at 5 (St. Martin's Press, in association with the Carnegie Endowment for International Peace, 1990).

contribution to the historical record and informed debate that public release would provide.

Similarly, we believe that CIA should consider including some categories of signal intelligence records in the files removed from the "operational files" exemption. SIGINT, particularly COMINT (and especially the cryptanalytic portion of COMINT) traditionally has been treated as the most sensitive of sources -- so much so that some material relating to U.S. cryptanalytical successes in the 1920s is still classified at the "Top Secret" level. Yet at the same time, the government has declassified historical material concerning COMINT/cryptanalysis from World War II. Other COMINT material has been made public on selected events, such as the C-130 incident in the 1950s, the KAL-007 downing, and the Berlin nightclub bombing. The most useful COMINT that could be declassified is historical material that has been written about extensively and the declassification of which would be of great use to scholars -- for example, VENONA material related to Soviet espionage in the U.S. and Britain.

C. Office of Security files.

As described in the August 8 Federal Register notice and based on our experience with government records, the files of the Office of Security appear the least likely of the three main categories of exempt "operational files" to produce significant releasable information of great interest to scholars, historians, and students of intelligence policymaking. We encourage the CIA to remove from the "operational files" exemption all records in this office that may appear eligible for declassification review and release based on the passage of time, changing circumstances, and their historical and public interest value. Given the finite resources available for the Agency's review of records for removal from the current "operational files" designations, we suggest that the bulk of those resources be focused on identifying files in the directorates of Operations and of Science and Technology rather than on those of less broad significance and interest in the Office of Security.

II. Reform of CIA's FOIA practices.

In hearings before Congress seeking support for passage of the CIA Information Act, representatives of the CIA repeatedly promised that "[t]he public can only stand to benefit" from an "operational files" exemption to the FOIA because the law's "reduced administrative burden will permit the CIA to respond to requests more quickly, thus providing more useful and timely information."⁴ Congressional support for the law was based on the belief that "this legislation does not frustrate the essential purposes of the FOIA. Requesters will continue to have access to CIA files containing the intelligence product and to information on policy questions and debates on these policies."⁵ In our experience as frequent FOIA requesters at CIA, this has not turned out to be the case.

A. Use of "glommarization" to avoid searches for requested records.

Over the years an increasingly large percentage of our requests have not been processed on the grounds that "the agency may neither confirm nor deny the existence or nonexistence of records responsive to your request." This overreliance on "glommarization" has been extended even to requests for types of records other agencies routinely produce

⁴ Hearings on S. 1324, *supra* note 1, at 8.

⁵ *Id.* at 2 (Statement of Chairman Barry Goldwater).

under FOIA such as biographical records on foreign political leaders, basic information that the CIA as an intelligence organization should be compiling if it is not doing so now. See, e.g., Exhibit A (refusal to confirm or deny existence of records containing biographical information on certain Czech political leaders involved in the country's reform movement in 1967-68, including Alexander Dubcek).

Moreover, despite acknowledgement from the CIA Office of General Counsel that non-designated "operational files" remain subject to search and that materials contained in "operational files" that are referred to by "markers" in non-operational files are also subject to FOIA, we cannot identify a single category where it appears that such searches are in fact undertaken in response to FOIA requests. See Exhibit B, copy of July 19, 1990 letter to the Center for National Security Studies from the CIA Office of General Counsel.

B. Continuing multi-year delays in receiving responses to requests.

It is simply not correct, as claimed in the August 8 Federal Register notice, that "a primary goal of the Act [to hasten FOIA response time] has been and continues to be met." It is true that "the major benefit to the public from this legislation" was, in the words of a CIA official, that:

"FOIA requesters now wait two to three years to receive a final response to their requests for information when they involve the search and review of operational files within the Directorate of Operations . . . [I]f this bill is enacted, I assure you that every effort will be made to pare down the queue as quickly as possible. This would surely be of great benefit if the public could receive final responses from the CIA in a far more timely and efficient manner. 6

Another CIA representative summarized the delay situation in 1984 and predicted improvements for the future in this way:

"It takes about 2 or 2 1/2 years today to process a request if it involves Directorate of Operations records. *If it does not involve the Directorate of Operations, it can take less, say up to 6 months to clear a case. We are hopeful that with the passage of this bill we will be able to respond in terms of weeks, or at most, months, to get a request back to the public.* The DDO queue is by and large the holdup at the moment. They have the bulk of our workload, and with some of the cases dropping out with the passage of this bill, we believe that the flow of materials throughout the Agency would be enhanced." (emphasis added) 7

The current median time lapse cited in the August 8 Federal Register notice of 2.4 months before requesters receive substantive responses to their FOIA requests is not even close to the delays we, as regular CIA requesters, have experienced for years. Nor has the average processing time we have experience even been close to the CIA's estimate of 6 months or less for non-operational files. Instead, based on our analysis of hundreds of requests filed

6 Hearings on S. 1324, supra note 1, at 8.

7 Legislation to Modify the Application of the Freedom of Information Act to the Central Intelligence Agency, Hearing before the Subcommittee on Legislation of the Permanent Select Committee on Intelligence, House of Representatives, 98th Cong, 2d Sess. 23 (1984)(testimony of Larry Strawderman, Chief, Information and Privacy Division, Central Intelligence Agency).

since 1984, our average delays in 1989 and 1990 were three to four years, and in 1992 the median time before a substantive response still stretched to two years or more. Worse, even after waiting several years for a response, the end product is often the release only of documents already in the public domain, such as Foreign Broadcast Information Service records. See, e.g., Exhibit C (of eight documents retrieved after a three-year wait, six FBIS documents were released and the two substantive policy documents denied in full).

Those requests for which we have received a response in six months' time or less have all, in our experience, been complete denials, "glomarizations" (refusals to confirm or deny that CIA has documents responsive to the request), or requests in which the CIA did no new search or declassification review but only pulled from its database of previously released FOIA documents (called "ORIS") a handful of materials, sometimes last reviewed for declassification several years before the request was filed.

C. Requests rejected as "unsearchable" or "requiring research".

Increasingly, bureaucratic hurdles imposed by the CIA's FOIA operation make it extremely difficult for requesters to use the FOIA in a meaningful fashion. For example, the CIA regularly refuses to conduct searches in response to requests on the alleged grounds that the subject of the request is "unsearchable" -- a response we receive from no other agency in the federal government. No other agency in our experience has responded to a narrowly-drawn request like the following one for "copies of all items concerning the People's Republic of China in the National Intelligence Daily from June 1-30, 1989" by stating:

"Your request as stated is unsearchable in our records systems. The FOIA does not require us to perform research or create records for a requester. Neither are we required to study a body of material to see if any of it is related to a specific event, activity, or incident. To study a body of material to see if any of it relates to the specifics of your request would constitute research which is neither required nor authorized under the FOIA."

See Exhibit D, July 13, 1994 letter from CIA to the National Security Archive. Even more astonishing was the rejection as "unsearchable" of a request for retrieval and release of two public statements issued by CIA itself discussing congressional testimony on and CIA information regarding the Banca Nazionale del Lavoro (BNL) affair. Id., August 9, 1994 letter from CIA to the Archive. (Other examples of requests rejected as "unsearchable" are also found at Exhibit D.) Given that a reasonably described request for records is all that the FOIA requires to trigger an agency search for responsive documents, these "unsearchable" responses to precise, narrowly-worded requests frustrate the requester and betray the access purposes of the Freedom of Information Act. Nor do practices like these tend to convince the public that the CIA takes its FOIA responsibilities seriously in the wake of having been granted its unique waiver from searching for and processing "operational files."

D. Inadequate searches.

The CIA's refusals to conduct even preliminary searches and the small number of documents generally produced in response to requests is especially troubling to us given the existence of the Agency Records and Information System ("ARCINS"), which contains "subject listings down to the folder level" of over 30 million records. Searching additional databases maintained by various directorates, such as the Directorate of Intelligence's three central data bases which index raw and finished intelligence reports at the document,

not merely folder title, level, should produce even more documents in response to requests, even if portions of them are ultimately denied under a FOIA exemption. See Exhibit E, excerpt from June 27, 1994 Advisory Committee on Human Radiation Experiments Staff Memorandum re "Methodological Review of Agency Data Collection Efforts: Initial Report on the Central Intelligence Agency Document Search" (describing CIA databases able to access agency records).

It is difficult to believe that any database at all was used in processing a recent request from the National Security Archive for the declassification and release of copies of four intelligence reports on the BNL affair, all of which were provided by the CIA to the Senate Select Committee on Intelligence and were specifically referred to in a letter from that committee to then Director Robert Gates. The response to this request was, again, that it was considered "unsearchable" and included the same boilerplate language quoted above as the rationale for refusing to process the request. See Exhibit F, letter from CIA to the National Security Archive dated July 1, 1994 rejecting request and appeal letter from the Archive dated August 9, 1994, with attached Congressional correspondence listing the CIA documents sought in the request. We urge the Agency to encourage all components to fully utilize all databases and other finding aids at their disposal to conduct adequate searches for records requested under the FOIA.

Conclusion

We are hopeful that this decennial review will result in removal of a substantial body of records currently categorized as "operational files" exempt from the search and review requirements of the FOIA. As part of this review, we encourage the establishment of standards for evaluating and removing additional record groups from the exemption in the future on a regular basis which reflect current realities, not outdated assumptions, about releasability to the public. We also urge the CIA to demonstrate that it takes seriously its statutory obligations under the FOIA and to commit to cure the serious problems with its current FOIA process, as described above, to comply with law and make the Agency more responsive to the public it serves. Adopting more user-friendly practices, including establishing a public reading room containing copies of material previously released by CIA under FOIA, are crucial if the CIA's FOIA practices are ever to reach some level of credibility with the public. Without a major overhaul of the CIA's FOIA operation, it will be increasingly difficult to justify the CIA's continued exemption, unique in the government, of large record groups from the scope of the FOIA.

We greatly appreciated the opportunity on August 29 to meet at CIA headquarters with many of the CIA staff intimately involved in this review to share our ideas on what needs to be done and how best it can be accomplished, and believe that the meeting was a very useful first step. If you have any questions or if we can provide further information or assistance, please do not hesitate to contact Sheryl Walter at the National Security Archive at (202) 797-0882 or Kate Martin of the ACLU/CNSS at (202) 675-2327.

General Counsel
National Security Archive

Kate Martin
Director
ACLU Center for National Security Studies

Attachments

Central Intelligence Agency



Washington, D.C. 20505

08 MAR 1994

RECEIVED MAR 10 1994

Mr. William Carnell
The National Security Archive
1755 Massachusetts Avenue, N.W.
Suite 500
Washington, D.C. 20036

Reference: F94-0294

Dear Mr. Carnell:

This is to acknowledge receipt of and is a final response to your 10 February 1994 Freedom of Information Act (FOIA) request referenced above.

Specifically, your request was for copies of "any and all biographical information on the following political leaders of Czechoslovakia, all of whom were involved (on one side or another) in that country's reform movement 1967-1968:

Alexander Dubcek
Antonin Novotny
Ondrich Cernik
Vaclav Prchlik
Jiri Hendrych
Drahomir Kolder
Cestmir Cisar
Miroslav Mamula
Ludvik Svoboda
Gustav Husak
Josef Spacek
Martin Vaculik
Alois Neuman
Jan Masaryk
Zdenek Mlynar
Bohuslav Lastovicka
Josef Lenart
Jiri Hajek"

The CIA may neither confirm nor deny the existence or nonexistence of records responsive to your request. Such information--unless, of course, it has been officially

Exhibit
A

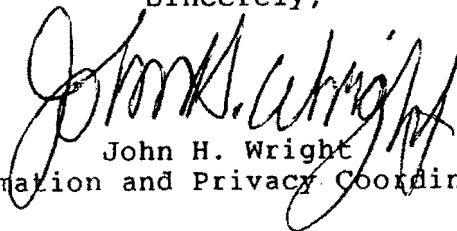
acknowledged--would be classified for reasons of national security under Executive Order 12356. The fact of the existence or nonexistence of such records would also relate directly to information concerning intelligence sources and methods. The Director of Central Intelligence has the responsibility and authority to protect such information from unauthorized disclosure in accordance with Subsection 102(d)(3) of the National Security Act of 1947 and Section 6 of the CIA Act of 1949.

Therefore, your request is denied under FOIA exemptions (b)(1) and (b)(3); an explanation of these exemptions is enclosed. The CIA official responsible for this determination is John H. Wright, Information and Privacy Coordinator. By this action we are neither confirming nor denying the existence or nonexistence of such records.

You may appeal this decision by addressing your appeal to the CIA Information Review Committee, in my care. Should you choose to do this, please explain the basis of your appeal.

We regret that we are unable to assist you further.

Sincerely,

A handwritten signature in dark ink, appearing to read "John H. Wright", is written over the typed name and title.

John H. Wright
Information and Privacy Coordinator

Enclosure

FOIA Policy, continued from previous page

Finally, we would like to raise an issue that we did not discuss at the meeting. It has come to our attention that the agency may routinely deny free-lance journalists fee waivers as representatives of the news media, and that it is very difficult for such journalists to learn and meet the standards for establishing news media status. The statute clearly intended to, and the regulations specifically do include free-lance journalists as representatives of the news media. Just because a requester does not work for an established news media organization should not prevent him or her from obtaining a fee waiver. On the contrary, we believe that once the requester establishes a publishing history, he or she should be presumptively given a waiver, unless the agency can affirmatively demonstrate that the requester still does not meet

the news media criteria. Many other agencies already operate under this standard. We encourage you to review the standards and practices of the OIP in order to ensure that all free-lance journalists are given news media fee waivers in accordance with the law.

Thank you for your attention to these matters. We appreciate your willingness to meet with us and to consider our views on these important issues. We look forward to your response to our concerns in this letter.

Sincerely,

CIA RESPONSE

22 March 1991

I have been asked to respond to your letter of 19 July 1990 in which you raised certain questions and concerns about CIA's interpretation of the CIA Information Act and CIA's compliance with the Freedom of Information Act (FOIA). We had previously met to discuss your concerns and, after reaching what I believe was a general agreement about CIA's obligations under these Acts, [redacted] who is no longer with this office, agreed to provide you with a written response.

Your first concern was about reports you have received that some Agency personnel who administer the FOIA may interpret the CIA Information Act as obligating the Agency to search and review only "finished" intelligence reports prepared for a CIA "client," such as the State Department or the White House. Allegedly, under this interpretation, everything prepared for "in-house" CIA use would be considered as "operational" and thus not subject to a FOIA search and review.

As George stated at our meeting, the Agency does not interpret the CIA Information Act in the manner reported to you. That Act exempts from the FOIA's search, review, disclosure, and publication requirements only those CIA files designated by the Director of Central Intelligence as operational files. As you know, the Act limits the designation of operational files to certain files of the Directorate of Operations, the Directorate of Science and Technology, and the Office of Security. In general terms, files are eligible for exemption if they document the conduct of intelligence activities. Files that are the sole repository of disseminated intelligence are not operational files. Of course, records from exempted operational files are frequently disseminated to and referenced in files that have not been exempted. If such records are returned to and retained solely in exempted operational files, they nevertheless are subject

to search and review. In addition, files that are not exempted are subject to search and review, even if they contain information derived or disseminated from exempted operational files. I have been assured that Agency personnel responsible for implementing the FOIA and the CIA Information Act understand and follow these requirements.

Your second concern was about CIA's response to requests that are identical or substantially similar to previous requests for the same material. CIA attempts to process FOIA requests in the most efficient and least expensive manner in accordance with its regulations, which authorize consultation "with the requester, as may be appropriate, in order to accomplish such arrangements and agreements with the requester as may be acceptable to the requester concerning the Agency's efforts and ability to act on his request expeditiously." 32 C.F.R. 1900.47(b).

One of the most expeditious ways for CIA to act on a request that covers all or a substantial part of a previous request is to consult with the requester, before accepting the request for processing, to determine whether any records disclosed to a previous requester would satisfy the request. Previously disclosed records are held in CIA's Officially Released Information System (ORIS). Our experience has shown that nearly all of the requesters who are offered ORIS material accept these releases in satisfaction of their requests. These requesters benefit because an ORIS release is faster than a completely new search and review. CIA benefits because processing time is saved that can be devoted to the FOIA backlog.

You have suggested that CIA should do more to inform a requester about the substantive scope of the proffered ORIS material and about the procedural nature of the consultation process. It is my understanding, however, that CIA file systems do not always permit the Agency to provide all the information you have suggested. Where it is responsible and feasible to do so, CIA is prepared to inform a requester how long ago the prior request was made and whether there is a reasonable likelihood that a new

(continued on next page)

Exhibit
B

CIA Response, *continued from previous page*

search and review would result in the release of any additional information. Such a response would help to enable a requester decide whether to ask CIA to conduct a new search. As a practical matter, each response to a requester will depend upon the facts of the particular request, and CIA's reviewers may conclude that a response that provides material from the ORIS database requires no further elaboration. However, the Agency's Information and Privacy Coordinator is sensitive to the concerns you raised and, although it is doubtful that standard language would be appropriate in all cases, the Coordinator has agreed to further consider the matter of what to tell requesters.

Nevertheless, you should be aware that, if upon review of the request and ORIS material CIA concludes that a new search would be appropriate, or if the requester so desires, CIA conducts new searches and attempts to relocate any redacted documents to determine whether the previously withheld portions of these documents, which may have been reviewed many years ago, can now be released. Moreover, CIA conducts these new searches even if the prior searches and reviews were recently completed, the request is the same as or is fully encompassed by the prior requests, no new documents are expected to be found, and no information withheld from previously disclosed documents is likely to be released. Of course, if fees are assessable, the requester will have to pay for any new searches conducted.

If a new search is conducted, it will be processed along with all the other pending requests on a "first-in, first-out" basis as of the time it is accepted. The time lost to a requester varies depending upon how long the negotiations over the ORIS material take, but the Agency's experience has been that, in most cases, it is a relatively short period.

Your third concern was that CIA clarify its response to requests for personal information under both the FOIA and

the Privacy Act. After considerable review, we have concluded that, when persons eligible for Privacy Act processing request information about themselves under the FOIA as well as the Privacy Act, it is appropriate to process their requests under both Acts as requested. This is our current policy.

Finally, you expressed concern that CIA "may routinely deny free-lance journalists fee waivers as representatives of the news media." First, I would point out that the FOIA distinguishes between fee waivers and reduced fees for representatives of the news media, and I assume you are referring to the latter. Second, the Agency does not routinely deny freelance journalists news media status, but accords such status if there is a reasonable basis for doing so. However, under the FOIA, use of the information disclosed is a relevant factor in according news media status and, therefore, a member of the news media might not qualify for reduced fees in a particular case. I understand that this does not happen very often, and the Agency gives due consideration to any reasonable basis a freelance journalist may put forward that he or she is entitled to news media status.

We appreciate your interest and concern about CIA's administration of the FOIA, and think the dialogue between us has been fruitful. This kind of discussion improves our understanding of problems, either real or perceived, that arise in the course of our compliance with the FOIA and, I hope demonstrates CIA's commitment to comply with both the letter and the spirit of the law.

Please let me know if I can be of further assistance.

Yours truly,

Associate General Counsel

Security Clearances, *continued from page 6*

these employees were eliminated such as those having to do with political associations.

SF-85 was revised to eliminate any questions concerning political associations and arrest or mental health history. The question concerning arrest in the remaining forms was specifically limited to preclude use in criminal proceedings, and the question concerning Communist party membership was eliminated from the SF-86.

Despite these improvements, problems remain. The broad inquiry concerning drug use remains intact as does the demand for personal mental health information on the SF-85P and SF-86. In addition new political advocacy questions on the SF-86 aimed at associations with organizations that may be involved in unlawful conduct remain untested. Those ques-

tions, apparently intended to get at knowing and intentional participation or advocacy in an organization whose aim is to overthrow the United States, remain vague and overbroad. Finally, the new release provision, while significantly narrower than before, continues to pose risk to personal privacy.

In addition to Congressional hearings, a number of federal unions filed lawsuits seeking to enjoin further use of the old forms. While most of the cases remain unresolved, one court did enjoin the use of the old SF-86, at least as applied to low level employees of the Railroad Retirement Board, because it violated their First Amendment and privacy rights. *American Federation of Government Employees v. U.S. R.R. Retirement Board*, 742 F. Supp. 450 (N.D. Ill. 1990) (See *First Principles*, Vol. 15, No. 3 (Aug. 1990)). No cases have yet been filed under the new forms. ■

Central Intelligence Agency



Washington, D.C. 20505

10 MAY 1994

Mr. Kenneth Mokoena
The National Security Archive
Suite 500
1755 Massachusetts Avenue, N.W.
Washington, D.C. 20036

RECEIVED MAY 16 1994

Reference: F91-1004

Dear Mr. Mokoena:

In the course of processing your 7 November 1989 Freedom of Information Act (FOIA) request for records pertaining to collaboration between Israel and South Africa on military technology and nuclear research from 1975 to 1989, the Arms Control and Disarmament Agency located two CIA documents and six Foreign Broadcast Information Service (FBIS) documents and referred them to us for our review and direct response to you.

We have reviewed the documents identified below:

Documents:

1. News release, 20 March 1980
2. News release, 28 February 1981
3. NES-90-229, 28 November 1990
4. AFR-89-219, 15 November 1989
5. NES-89-222, 20 November 1989
6. TAC-90-024, 15 August 1990
7. Memorandum, 6 December 1989 with attachment
8. Report, 8 July 1989

We have determined that the FBIS documents numbered 1-6 can be released in their entirety. Copies of the documents are enclosed.

We have further determined that the CIA documents numbered 7-8 must be withheld in their entirety on the basis of FOIA exemptions (b)(1) and (b)(3). An explanation of exemptions is also enclosed.

Exhibit
C

Central Intelligence Agency



Washington, D.C. 20505

13 JUL 1994

Ms. Jane Gefter
The National Security Archive
1755 Massachusetts Avenue, N.W.
Suite 500
Washington, D.C. 20036

RECEIVED JUL 15 1994

Reference: F94-1225

Dear Ms. Gefter:

This is to acknowledge receipt of your 14 June 1994 Freedom of Information Act (FOIA) request for copies of "all items concerning the People's Republic of China in the National Intelligence Daily from June 1-30, 1989."

Your request as stated is unsearchable in our records systems. The FOIA does not require us to perform research or create records for a requester. Neither are we required to study a body of material to see if any of it is related to a specific event, activity, or incident. To study a body of material to see if any of it relates to the specifics of your request would constitute research which is neither required nor authorized under the FOIA.

We regret we are unable to assist you further.

Sincerely,

John H. Wright
Information and Privacy Coordinator

Exhibit
D

Central Intelligence Agency



Washington D.C. 20505

09 AUG 1994

RECEIVED AUG 11 1994

Ms. Joyce Battle
The National Security Archive
1755 Massachusetts Avenue, N.W., Suite 500
Washington, D.C. 20036

Reference: F94-1461

Dear Ms. Battle:

This is to acknowledge receipt of your 21 July 1994 Freedom of Information Act (FOIA) request referenced above.

Specifically, you are requesting copies of the following:

"1. An October 10, 1992 public statement issued by the CIA discussing testimony before the Senate Select Committee on Intelligence in regard to the Banca Nazionale del Lavoro (BNL) affair.

2. A public statement issued on September 18, 1992 regarding CIA information on the Banca Nazionale del Lavoro (BNL) affair."

Your request as stated is unsearchable in our records systems. The FOIA provides for public access to reasonably described records. This means that a document must be described sufficiently to enable a professional employee familiar with the subject to locate the document without an unreasonable amount of effort. This, with few exceptions, means that the documents must be locatable through the indexing to our various records systems. The FOIA does not require us to perform research or create records for a requester. Neither are we required to study a body of material to see if any of it is related to a specific event, activity, or incident.

We regret we are unable to assist you with your request. If you can describe the reports in which you are interested in greater detail, we shall be happy to search for them on your behalf.

Sincerely,

John H. Wright
Information and Privacy Coordinator

Central Intelligence Agency



Washington, D.C. 20505

12 JUL 1994

Ms. Joyce Battle
The National Security Archive
1755 Massachusetts Avenue, N.W.
Suite 500
Washington, D.C. 20036

RECEIVED JUL 14 1994

Reference: F94-1278

Dear Ms. Battle:

This is to acknowledge receipt of your 1 July 1994 Freedom of Information Act (FOIA) request for all records relating to "the export of nuclear equipment, technology, facilities, technical assistance, training, or information from China to Iraq from 1980 to 1991."

Your request as stated is unsearchable in our records systems. The FOIA provides for public access to reasonably described records. This means that a document must be described sufficiently to enable a professional employee familiar with the subject to locate the document without an unreasonable amount of effort. This, with few exceptions, means that the documents must be locatable through the indexing to our various records systems. The FOIA does not require us to perform research or create records for a requester. Neither are we required to study a body of material to see if any of it is related to a specific event, activity, or incident. To study a body of material to see if any of it relates to the specifics of your request would constitute research which is neither required nor authorized under the FOIA.

We regret that we are unable to assist you.

Sincerely,

John H. Wright
Information and Privacy Coordinator

Central Intelligence Agency



Washington, D.C. 20505

RECEIVED MAR 02 1994

Ms. Marjorie Robertson
The National Security Archive
1755 Massachusetts Avenue, N.W., Suite 500
Washington, D.C. 20036

Reference: F93-2185

Dear Ms. Robertson:

This is to acknowledge receipt of your 28 October 1993
Freedom of Information Act (FOIA) request.

Specifically, you are requesting the following information:

"1. Documents of 1949 and 1950 relating to the establishment of the Free Europe Committee (later changed to the National Committee for a Free Europe) and the founding of Radio Free Europe.

2. CIA reports in November and December 1956 on the responsibility of Radio Free Europe in inciting and prolonging the Hungarian uprising.

3. Memoranda by CIA staff on how to deal with subsequent revelations in February and March 1967 that the CIA financed Radio Free Europe."

4. You also request "[a]ll studies done specifically concerned with Radio Free Europe."

With respect to items 1-3 of your request, we must advise you that these portions of your request are unsearchable in our records systems. The FOIA provides for public access to reasonably described records. This means that a document must be described sufficiently to enable a professional employee familiar with the subject to locate the document without an unreasonable amount of effort. This, with few exceptions, means that the documents must be locatable through the indexing to our various records systems. The FOIA does not require us to perform research or create records for a requester. Neither are we required to study a body of material to see if any of it is related to a specific event, activity, or incident.

Central Intelligence Agency



Washington, D.C. 20505

20 MAY 1994

Ms. Kate Doyle
The National Security Archive
1755 Massachusetts Avenue, N.W.
Suite 500
Washington, D.C. 20036

RECEIVED JUL 11 1994

Reference: F94-0746

Dear Ms. Doyle:

This is to acknowledge receipt of your 8 April 1994
Freedom of Information Act (FOIA) request referenced above.

Specifically, you are requesting all records relating to
the "June 30, 1984 abduction of Bolivian President Hernan Siles
Zauzo and the associated coup attempt." You ask that this
request also include "information on the following:

1. The role of the Bolivian counternarcotics police
UMOPAR in the abduction and coup attempt.
2. The roles of UMOPAR officers Col. Rolando Saravia,
Col. German Linares, Carlos Barriga and Julio Diaz-Vargas.
3. The role of U.S. Ambassador Edin Corr in obtaining
the release of President Siles Zauzo.
4. The discussions and decisions leading up to the
July 17, 1984 announcement by the State Department that
they would continue to work with UMOPAR despite their
involvement in the abduction of President Siles Zauzo."

We can search that portion of your request for records
concerning the "June 30, 1984 abduction of Bolivian President
Hernan Siles Zauzo and the associated coup attempt." However,
any material located as a result of our search, if any exists,
would also include those portions of your request relating to
items 1-3 above. Furthermore, since the FOIA does not require
us to perform research or create records for a requester, nor
does it require us to study a body of material to see if any of
it is related to a specific event, activity, incident, or
individual, it will be your responsibility to review whatever
releasable documents are located, if any exist, to see if they
pertain to the specifics of items 1-3.

***** STAFF MEMORANDUM *****

TO: Members of the Advisory Committee on Human Radiation Experiments

FROM: Advisory Committee Staff

DATE: June 27, 1994

RE: Methodological Review of Agency Data Collection Efforts:
Initial Report on the Central Intelligence Agency Document Search

This initial report provides: (1) background on the Central Intelligence Agency, its involvement with human experimentation, and its records; (2) a description of the CIA's records search; and (3) staff observations and recommendations to the Committee for future action.

EXECUTIVE SUMMARY

1. CIA History and Records

The CIA was created in 1947 to serve as the government's principal intelligence collection and analytical agency, as well as to engage in covert actions to influence events in foreign countries through propaganda, economic, political, and paramilitary means. In the 1950s and 60s, the CIA engaged in an extensive program of human experimentation, using drugs, psychological, and other means, in search of techniques to control human behavior for counterintelligence and covert action purposes. The possibility that CIA itself engaged in human *radiation* experiments emanates from references in a 1963 CIA Inspector General's (IG) report on Project MKULTRA, which was a program "concerned with research and development of chemical, biological, and radiological materials capable of employment in clandestine operations to control human behavior."

MKULTRA was the subject of extensive internal, congressional, and outside investigations in the 1970s. In 1973, the CIA purposefully destroyed most of the MKULTRA files concerning its research and testing on human behavior. In 1977, the agency uncovered additional MKULTRA files in the budget and fiscal records that were not indexed under the name MKULTRA. These documents detailed over 150 subprojects that the CIA funded in this area, but no evidence was uncovered at that time concerning the use of radiation.

CIA records are maintained at CIA Headquarters and the CIA record center. Most older records, before 1980, are in paper form with electronic databases of the file-folder titles. The MKULTRA files are held by the CIA General Counsel, although most have been released to the public.

Exhibit
E

Although the CIA has offices around the world and elsewhere in the United States, its records are maintained in and controlled by CIA Headquarters in Langley, Virginia and at the CIA records center (which is independent from the National Archives and the federal records centers). The main database that the CIA has been searching is the Agency Records and Information System (ARCINS), which contains information on the holdings of most of the major components in the Agency Archives and Records Center. The data base contains subject listings down to the folder level.

The following is a description of the record system in each of the four directorates and the DCI's offices and the CIA's report of its search process.

(1) **Director of Central Intelligence Area.** The files under the control of the DCI are in paper from years 1947-80, and are indexed in the ARCINS. The agency conducted a key word search of these files for topics dealing with human radiation experiments. Many of the MKULTRA files, which are held by the General Counsel, were searched by hand; the agency also contacted and interviewed former staff who were involved in or had knowledge of MKULTRA projects, including Richard Helms and Sidney Gottlieb, the Director of TSD who ran the MKULTRA programs. It does not appear that the agency contacted persons on the IG staff who prepared the 1963 IG report on MKULTRA.

(2) **Directorate of Science and Technology.** The DS&T used the ARCINS and focused its search primarily on two of its offices: the Office of Technical Service (formerly the TSD that conducted MKULTRA) and the Office of Research and Development. The directorate pulled approximately 30 cubic feet of documents and is still engaged in a hand search of this material. The agency brought in two retired persons ("annuitants") with knowledge of these activities to help with search.

(3) **Directorate of Intelligence.** The DI has three central data bases which are computerized index systems of raw and finished intelligence reports (depending on the time frame), as well as two hard copy indices. The former are queried by subject categories, area codes, and/or key words. The documents themselves (not merely "folder titles") are indexed. The initial search was for any records relating to ionizing radiation experiments on humans. In those instances where there is no keyword capability, broad subject codes were linked with the United States: i.e., if a document referred solely to foreign activities not including the United States, it would not have surfaced. (Soviet atomic bomb developments were not the subject of the initial request.) The DI also searched for records archived by the Office of Scientific Intelligence using ARCINS for topics dealing with human radiation experiments. Approximately 18,600 pages were reviewed by hand, and no responsive documents were located. OSI files are still under review, and the Directorate is conducting additional searches based on new information supplied by the Committee.

(4) **Directorate of Administration.** The DA's files are indexed primarily by name. However, it also searched the Office of Security, because of its early involvement in MKULTRA.

Central Intelligence Agency



Washington, D.C. 20505

01 JUL 1994

Ms. Joyce Battle
The National Security Archive
1755 Massachusetts Avenue, N.W., Suite 500
Washington, D.C. 20036

RECEIVED JUL 11 1994

Reference: F94-1013

Dear Ms. Battle:

This is to acknowledge receipt of your 12 May 1994 Freedom of Information Act (FOIA) request referenced above.

Specifically, you are requesting copies of "[t]he following intelligence reports on Banca Nazionale del Lavoro (BNL) dated:

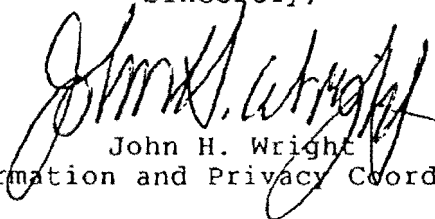
1. September 15, 1989
2. October 5, 1989
3. October 6, 1989
4. October 20, 1989"

Your request as stated is unsearchable in our records systems. The FOIA provides for public access to reasonably described records. This means that a document must be described sufficiently to enable a professional employee familiar with the subject to locate the document without an unreasonable amount of effort. This, with few exceptions, means that the documents must be locatable through the indexing to our various records systems. The FOIA does not require us to perform research or create records for a requester. Neither are we required to study a body of material to see if any of it is related to a specific event, activity, or incident. To study a body of material to see if any of it relates to the specifics of your request would constitute research which is neither required nor authorized under the FOIA.

Exhibit
F

We regret we are unable to assist you with your request. If you could provide a specific subject or further describe the reports in which you are interested, we shall be happy to conduct records searches on your behalf.

Sincerely,

A handwritten signature in dark ink, appearing to read "John H. Wright", written over the typed name.

John H. Wright
Information and Privacy Coordinator

The National Security Archive

Documenting U.S. Foreign Policy

A Project of the Fund for Peace

August 9, 1994

John H. Wright
Information and Privacy Coordinator
Central Intelligence Agency
Washington, D.C. 20505

RE: F94-1013
Archive FOIA No. 94Q435CIA040

Dear Mr. Wright:

I am writing in response to your letter of July 11, 1994, in which you indicated that a request for four intelligence reports on the Banca Nazionale del Lavoro (BNL) was unsearchable in your records systems. I question your assertion that the information in my request is insufficient to locate documents in your files. The subject and dates provided should be sufficient for a keyword and date search of your indexing system.

The documents requested were the subject of considerable Congressional, media and public attention when questions arose about the completeness of the CIA's response to requests for information from judicial authorities investigating the BNL affair. The requested intelligence reports were identified and provided to the Senate Select Committee on Intelligence for its review in response to a request for CIA information pertaining to BNL.

I have enclosed a September 1990 letter from the Senate Select Committee on Intelligence referring to the documents. With this citation, I believe that sufficient information has been provided to locate these materials for review.

I look forward to your response. If you have any questions or believe a discussion of this matter would be beneficial, please do not hesitate to contact me.

Sincerely,



Joyce Battle

Enclosure

ATTACHMENT

With respect to the CIA letter of September 17, 1992, to the Department of Justice relating to the federal investigation of activities at the Banca Nazionale del Lavoro Atlanta branch, please describe in detail:

1. All of the contacts between the Department of Justice (including the Federal Bureau of Investigation) and the CIA which led to the transmittal of this letter. Such description should include:

-- When did each contact occur?

-- What offices were involved in each contact? Who were the individuals acting for DOJ? Who were the individuals acting for CIA?

-- Were the communications oral, in writing, or both?

-- What was the substance of each contact, including each request for information and each response thereto?

-- In the course of any of such contact, did DOJ ever share with CIA officials the Atlanta prosecution theory or strategy? If so, please describe the circumstances.

-- What guidance, if any, did DOJ officials give CIA with respect to the form or content of CIA responses? Was CIA ever advised to conform the contents of its response to fit the prosecution theory of the case? If so, please explain the circumstances.

-- Was CIA apprised in the course of any contact that DOJ planned to enter its response into evidence in the Drogoul case and/or release it to the public? If so, when did this occur?

2. The process within CIA which led to the letter of September 17, 1992, to include:

-- Which office at CIA was responsible for the drafting, reviewing, and/or final approval of the CIA response of September 17, 1992? Did the General Counsel review the response? Did the DCI or DDCI?

-- Did any CIA official take the position prior to its release that any portion of the September 17 letter, or any draft of that letter, was inaccurate or misleading? If so, how was this objection dealt with?

-- Describe all materials that were consulted in preparing the letter. Who was responsible for searching for and assembling these materials and what process was

used to do so?

-- Specifically, did the author(s) of the September 17 letter prepare the answers with knowledge of and/or access to the September 15, October 5, October 6, and October 20, 1989, clandestine reports concerning BNL that SSCI staff discussed at the September 28, 1992, meeting?] *

-- Precisely to what was CIA referring in the September 17 letter's reference in answer number 8 to "publicly available information, acquired in the December, 1989 - January, 1990 time-frame, that BNL-Rome was aware of the illegal activities engaged in by BNL-Atlanta"?

-- Why did CIA believe the December 1989-January 1990 public information met the test for "any information" regarding its awareness of "illegal activities" while the October 1989 clandestine reports did not? Does CIA still adhere to this view?

-- Did CIA consent to the September 17, 1992 letter being released to the media and the public? Which office approved this?

3. Communications with the DOJ and Judge Shoob concerning CIA information, to include:

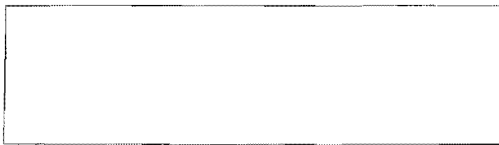
-- When did CIA transmit to DOJ raw intelligence and any operational files or information relating to any knowledge by BNL-Rome and/or entities of the United States Government of BNL-Atlanta's activities? When these documents were transmitted, did CIA include summaries or explanatory information? Were summaries transmitted prior to or after transmission of the raw intelligence? When, if ever, was DOJ provided with the September 15, October 5, October 6, and October 20, 1989, clandestine reports concerning BNL that SSCI staff discussed at the September 28, 1992, meeting?

-- By the time that the first BNL-Atlanta indictments were issued in February 1991, had the Intelligence Community provided DOJ with all available Intelligence Community information and documentation on any knowledge by BNL-Rome and/or entities of the United States Government of BNL-Atlanta's activities? If not, please explain what information was not provided and why.

-- When did Judge Shoob receive raw intelligence and any operational files or information relating to any knowledge by BNL-Rome and/or entities of the United States Government of BNL-Atlanta's activities? Has Judge Shoob had constant access to these materials since they came into his possession? When these documents were transmitted to Judge Shoob, did CIA or DOJ include

summaries or explanatory information? Were summaries transmitted to Judge Shoob prior to or after transmission of the raw intelligence? When, if ever, was Judge Shoob provided with the September 15, October 5, October 6, and October 20, 1989, clandestine reports concerning BNL that SSCI staff discussed at the September 28, 1992, meeting?





AUG 31 8 29 AM '94

August 22, 1994

Director
Information Management
Central Intelligence Agency
Washington, DC 20505

Dear Sir or Madame:

This letter provides comments in response to the Federal Register Notice dated Monday, August 8, 1994, page 40339.

The thrust of the CIA's information release activities must, by definition, evolve in response to changing world conditions. Therefore, business as usual, is likely to be unacceptable within the context of domestic and international concerns.

Although the CIA's Historical Review Program has expanded substantially since 1992, much of the material released has been mandated by outside executive branch directives. For example, the "over 140,000 pages from the JFK sequestered collection of documents" was ordered reviewed and released by President Clinton. I believe that the "over 1,500 pages of records on Raoul Wallenberg" has also been released in response to requirements external to the CIA. A more proactive approach is suggested, and one that concentrates on the needs of historical researchers.

- 1) THE CIA SHOULD USE A FLOATING 30-YEAR TIMELINE TO RETRIEVE AND REVIEW HISTORICAL MATERIALS FOR RELEASE.

Materials of historical importance need to be made available up through 1964, and more recent materials need to be reviewed when their 30-year anniversaries are reached.

- 2) THE CIA SHOULD GIVE TOP PRIORITY TO THE REVIEW OF OLDER CIA HISTORICAL REPORTS (WHICH CURRENTLY EXIST BUT ARE RESTRICTED OR CLASSIFIED).

CIA Historical Reports and documents generated by CIA internal historians are already in a form suitable for use by historical researchers. These secondary documents will provide the most accurate interpretation of historical events for historians, and the least additional work to be useful.

- 3) THE CIA HISTORICAL REVIEW PROGRAM SHOULD COMPILE AN UNCLASSIFIED BIBLIOGRAPHY OF CIA HISTORIES, INCLUDING ALL

**KNOWN DOCUMENTS, THEIR CURRENT LEVEL OF AVAILABILITY, AND
THE ANTICIPATED DATE OF THEIR NEXT DECLASSIFICATION REVIEW.**

This omnibus historical bibliography will provide a good road map for historical researchers, while potentially reducing the workload for those involved in processing FOIA requests.

- 4) TO ENCOURAGE MAXIMUM UTILIZATION BY HISTORIANS OF ONGOING DECLASSIFICATION MATERIALS, THE CIA SHOULD CONTINUE TO SPONSOR ADDITIONAL SYMPOSIA THROUGH THE CENTER FOR THE STUDY OF INTELLIGENCE.

This will serve to bring these newly accessible materials to a broad range of researchers, and thus preclude misinterpretation by potentially hostile researchers, and also get the "biggest bang for the buck."

- 5) THE CIA SHOULD ESTABLISH A "PUBLIC READING ROOM" IN THE WASHINGTON, DC METROPOLITAN AREA FOR MATERIALS RELEASED UNDER THE HISTORICAL REVIEW PROGRAM. THE READING ROOM SHOULD ALSO INCLUDE MATERIALS OF GENERAL INTEREST WHICH HAVE BEEN RELEASED TO REQUESTERS UNDER THE FREEDOM OF INFORMATION ACT, AND THOSE MATERIALS WHICH THE CIA HAS MADE ACCESSIBLE PREVIOUSLY UNDER OTHER PROGRAMS.

Suggestions for Materials which should be reviewed for release:

I also suggest that the following record sets be reviewed for declassification and availability for several reasons including that they address the topic of non-US development of atomic weapons. Furthermore, they are over 45 years old.

FBIS (FOREIGN BROADCAST INFORMATION SERVICE) REPORTS DATED PRIOR TO DECEMBER 31, 1950.

FOREIGN DOCUMENTS DIVISION (FDD) REPORTS DATED PRIOR TO DECEMBER 31, 1950.

Q INFORMATION REPORTS WRITTEN PRIOR TO DECEMBER 31, 1950.

FDD TRANSLATIONS DATED PRIOR TO DECEMBER 31, 1950.

U REPORTS DATED PRIOR TO DECEMBER 31, 1950.

Comments on CIA Files Designated as Operational

I do not believe that, for the purposes of FOIA request, that all the CIA files presently designated as Operation should continue to be treated as such.

Specifically, the Personality files have contained records on persons surveilled within the borders of the United States for partisan and political reasons rather than counterintelligence reasons. The exemption of Personality file searches have, by themselves, subverted the intent of the FOIA statutes, because the CIA FOIA office routinely refuses to search the Personality files for applicable records.

I feel that while much of the material within the Personality files, may in fact be exempt under FOIA statutes, treating the entire set of files as such is counterproductive, improper and illegal. Therefore, the older Personality files (more than 25 years old) should be considered outside the scope of operational files for the purpose of initial FOIA searches.

Thank you for requesting and considering my comments.

Sincerely,



**NATIONAL COORDINATING COMMITTEE
FOR THE PROMOTION OF HISTORY**



**Administrative Offices: 400 A STREET SE
WASHINGTON, DC 20003/(202) 544-2422**

Dr. Page Putnam Miller
Director

Members

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Conference Group for
Central European History
Women Historians of the Midwest
Polish American Historical Association
Agricultural History Society
American Library Association—
Library History Round Table
Federation of State Humanities Councils
Society for History in the
Federal Government
National Council on Public History
National Archives Assembly
American Association for the
History of Medicine
Association for Documentary Editing
Midwest Archives Conference
National Association of Government
Archives and Records Administrators
Federation of Genealogical Societies
Oral History Association
Mid-Atlantic Regional Archives Conf.
American Society for Legal History
American Studies Association
Council on America's Military Past
Economic History Association
History Associates, Inc.
Institute for Historical Study
(San Francisco)
New England Archivists
Society of Georgia Archivists
Society for Industrial Archeology
Southern Association for Women
Historians
American Council of Learned Societies
Community College Humanities Association
National Genealogical Society
Urban History Association
Western Association of Women Historians

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Maryland	Utah
Michigan	Vermont
Minnesota	Wisconsin
Mississippi	

September 7, 1994

Mr. Ed Cohen
Director, Information Management
Central Intelligence Agency
Washington, DC 20505

Dear Mr. Cohen,

I received the attached letter from Athan Theoharis, a professor of history at Marquette University. He heard about the request for comments in the Federal Register but did not see the announcement. He has thus asked me to forward his comments to you.

Sincerely,

Page Putnam Miller

MU Marquette University

Charles L. Coughlin Hall
Milwaukee, WI 53233
(414) 288-7217, 288-7385

August 26, 1994

Page Putnam Miller, Director
National Corrdinating Committee

Dear Page:

A colleague advised me of the September 7, 1994, ^{deadline} comment^Are the CIA request for comments on the historical value of CIA operational files and other CIA records. Since this colleague did not report to whom I should send this comment, I am mailing it to you and request that you send it to the appropriate office or official.

Clearly it is difficult to offer a firm assessment on the historical value of CIA records, and particularly the Agency's operational files. That difficulty stems not from the questionable value of these records but the fact that CIA records were not accessible to historical researchers until passage of key amendments to the Freedom of Information Act in 1974. Even then, released CIA records were heavily redacted and then, in 1983, CIA operational files were totally exempted from release under the FOIA. In arguing for the passage of the 1983 amendment, CIA officials emphasized the sensitivity of these records and how their public release would adversely affect the Agency's liaison relationship with other foreign intelligence agencies and the Agency's ability to recruit sources. In itself, this is an argument for the importance of these records for historical research (whenever released) and against the destruction of these records. Operational files are a record of the Agency's operations and procedures--and given the Agency's importance to the formulation and execution of U.S. foreign policy, these records provide an essential record to the student of U.S. foreign policy. As well, students of bureaucracy will find these records of inestimable value, providing insights into the Agency's methods, procedures, priorities, and as well its successes and failures. Last the very secrecy of the Agency's operations make CIA records of particular value providing a record of the Agency's relationship with the White House, conceptions of Congress's role, conceptions of public and press opinion. The very fact that the CIA operated in secrecy means that CIA records offer a far more comprehensive record of executive policy and decisions than those of other executive agencies and the White House, whose personnel might have otherwise hesitated to create written records of sensitive decisions. While retention of the resulting massive records might create housekeeping problems, these are records of great historical research value and should be preserved.

Sincerely,

ARTHUR ANTONIATIS
Professor of History

NATIONAL COORDINATING COMMITTEE
FOR THE PROMOTION OF HISTORY



Administrative Offices: 400 A STREET SE
WASHINGTON, DC 20003(202) 544-2422

Dr. Page Putnam Miller
Director

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Conference Group for
Central European History
Women Historians of the Midwest
Polish American Historical Association
Agricultural History Society
American Library Association--
Library History Round Table
Federation of State Humanities Councils
Society for History in the
Federal Government
National Council on Public History
National Archives Assembly
American Association for the
History of Medicine
Association for Documentary Editing
Midwest Archives Conference
National Association of Government
Archives and Records Administrators
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Oral History Association
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Historians
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Mississippi	

NCC Briefing Sheet on Historical Value of Operational Files of the CIA

August 24, 1994

Background: On August 8 the Federal Register carried a request for comments from the public regarding the historical value of the subject matter of the Central Intelligence Agency's (CIA) operational files. Since 1984 these files have been exempt from Freedom of Information Act (FOIA) requests. The CIA Information Act of 1984 exempted from FOIA searches three categories of operation files -- the files of the directorate of Operations, the files of the Directorate of Science and Technology, and the files of the Office of Security. Within these categories some of the files that would be of most interest to historians are the Policy and Management files of the Directorate of Operations, described in the Federal Register announcement as files containing information concerning the management of individual projects and decisions made for the conduct of operational activities. In hearings in 1983 when this legislation was under consideration, historians testified in the House and Senate in opposition to policies that closed off large bodies of records without any provisions for eventual access. In subsequent amendments, spearheaded by Senator Patrick Leahy, some concessions were made to ensure that the legislation not undercut the public's access through the FOIA to information used in setting United States foreign policy. One of the amendments adopted requires that not less than once every 10 years the Director of Central Intelligence review those categories of records exempt from FOIA requests. With the end of the 10 year period occurring in October, the CIA is soliciting comments to assist with this review.

Key Issues:

1. Through its Openness Initiative the CIA has in the last few years made some select information available to the public. But the long list in the Federal Register under "Declassification and Release of CIA Information of Historical Value" includes relatively few documents. At the March, 1994 CIA Conference on the Origin and Development of the CIA in the Administration of Harry S. Truman, Dr. Anna Nelson of American University in a session titled "Research, Records, and Declassification Today" made clear that "the efforts of CIA public relations officials notwithstanding, the Agency has released very few of its records." The CIA collection in the National Archives consists mainly of intelligence estimates, articles from Studies in Intelligence, some documents used in the preparation of official CIA histories, records related to the JFK assassination that were required by law to be deposited at the National Archives, and some selected documents dealing with specific issues.

2. Scholars require comprehensive access to records. Preselected groups of documents pulled from the files are not a satisfactory alternative. The historical

profession has for a long time urged that older records of historical significance be transferred to the National Archives and made available to researchers. While historians value the FOIA, historical methodology is best served when researchers have access to the whole body of records and not isolated documents. As the National Archives stated in a 1980 General Accounting Office report, "To fully explore a research topic, a researcher requires comprehensive access to the records, i.e., to examine the records with minimal constraints." The recent CIA declassification efforts have resulted in two archival boxes of material related to the Cuban Missile Crisis being placed in the National Archives. So few documents raise more questions than provide answers for historians.

3. The principle that the sensitivity of a record declines with age should be a part of all access policies. A most troubling aspect of the current designation of files to be exempt from the Freedom of Information Act is that there is no consideration of the age of documents. Thus a 1950 document is as inaccessible as one from 1990, if it falls within one of the exempted categories.

4. Until the mid-twentieth century, the State Department was the primary agency involved in the conduct of foreign affairs. Today, the National Security Council, as well as the CIA, have pivotal roles. The CIA acknowledged this role in sponsoring a conference in October, 1993 on "Teaching Intelligence." At this conference the CIA provided participants with a collection of syllabi of Intelligence-Related Courses. One such syllabus begins with the statement: "The flow of information to policy makers, particularly on critical areas of foreign affairs, has been greatly influence by what intelligence agencies generate and by their posture toward foreign policy issues. This course will examine the role of strategic intelligence and intelligence agencies as a tool of United States foreign policy." Although the CIA may seek to encourage the study of intelligence, this effort appears only half hearted without providing access to the historical records.

5. If the CIA is to defend its mission in this rapidly changing world, there needs to be more information available that will allow a meaningful debate on the role of intelligence gathering and analysis for the conduct of foreign policy. Many inside and outside of government feel that secrecy has not only handicapped CIA's ability to make a case for the value of intelligence assessments but has also handicapped the quality of analytical studies by insulating those who prepare intelligence assessments from dialog with specialists outside the agency.

6. Unless the CIA makes available more of its historic documents, the Foreign Relations of the United States (FRUS), the State Department's documentary series of 30 year old documents that provide an authentic and comprehensive presentation of American foreign relations will be distorted. The State Department Advisory Committee on Historical Diplomatic Documentation, which is mandated by law to have oversight over both the publication of FRUS volumes and the State Department declassification program, noted in its August annual report that the Committee is preparing to contest declassification refusals by the Department of State and the CIA. The Committee has unanimously agreed that there would be serious distortions to the record of American foreign policy with at least two volumes on the Kennedy presidency, if these documents over thirty years old are not included.

Recommendation: Historians urge that there be a full scale revision of the operational categories defined in the CIA Information Act of 1984 to ensure that older records of historical value are accessible to scholars and to the public.

Comments from the Public Concerning
Decennial Review of CIA Operational File Exemptions

Received as of 25 January 2005

	Writer	Argument
1.		Requests special consideration of operational files pertaining to OMS and medical intelligence
2.		Requests a specific 1967 document relating to the USS Liberty
3	(researcher/writer on intel topics)	Concerned that decennial review process will result in file destruction...argues that DO records are historically significant and that disclosure is essential for a well informed public.
4	R. Bruce Craig Director, National Coalition for History	Suggests declassification of ops files older than 30 years...cites examples of major releases of ops records that did not harm national security...asserts ops file series encompass releasable materials...reminds us that CIA has not released promised convert ops materials...alleges CIA has reclassified previously released material..
5	Michael J. Churgin American Society for Legal History; Univ. of Texas	Urges maximum disclosure of ops records because of their historical significance
6	John W. Carlin Archivist of the U.S. NARA	Believes cleared NARA staff to examine records to help determine whether they should remain exempt...wants NARA to accession full-text version of CREST records...wants to ensure that 50-year old records are sent for accessioning, not destroyed.
7	Thomas Blanton and Meredith Fuchs National Security Archive	Presents a nine-page argument asking CIA to narrow its categories of exempt records because scholars and public need to know intel history and learn from experience.
8	James H. Lesar, Esq.	Everything CIA has ever done stinks and the public needs to know the details of its corruption.
9	Meredith Fuchs National Security Archive	Asks CIA to make the decennial review docket (notice and comments) publicly available--on CIA's website or NSArchive's.

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RELEASE DATE:
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24 December 2004

Edmund Cohen
Director of Information Management Services
Central Intelligence Agency
Washington, D.C. 20505

Dear Mr. Cohen:

This letter is in response to the request for solicitation of comments on the historical value of CIA files, which was published in the Federal Register, Volume 69, No. 244, 21 December 2004.

I would like to suggest that the during the second decennial review, the CIA consider those records from the Directorate of Operations, Directorate of Science and Technology, and Office of Security that pertain to medical support for operations, the CIA "Office of Medical Services (OMS)," and "medical intelligence."¹ The CIA Office of Medical Services has been an integral part of the Agency since 1947. In 1997, Dr. John Tietjen, Director of OMS from 1947-1974, was designated as a "CIA trailblazer" by former DCI George Tenet. Dr. Tietjen was instrumental in establishing the Agency's worldwide medical program and pioneering aspects of medical and psychological field support for clandestine operations. Since at least 1963, the "VIP Health Watch" program to monitor the psychological and physical health of foreign leaders has been an integral component of the Agency's leadership analysis efforts. Since 1949, the CIA Office of Scientific Intelligence has been responsible for producing intelligence on foreign biomedical capabilities, trends, and research and development for inclusion in various analytical products, such as National Intelligence Estimate 11-6-56, Capabilities and Trends in Soviet Science and Technology.

My interest in the above subjects stems from research towards a scholarly history of medical intelligence and medical support for clandestine operations from World War II to the present. My research is based, first and foremost, on the extensive archival records held in the United States National Archives, Center for Military History, US Army Military History Institute and several private archival collections. I have made extensive use of declassified archival material related to this subject that are maintained in Record

¹ DOD Dictionary of Military Terms defines "medical intelligence" as "That category of intelligence resulting from collection, evaluation, analysis, and interpretation of foreign medical, bio-scientific, and environmental information that is of interest to strategic planning and to military medical planning and operations for the conservation of the fighting strength of friendly forces and the formation of assessments of foreign medical capabilities in both military and civilian sectors." DOD Joint Publication 1-02, 7 October 2004

Group 263 at the National Archives, including the CIA Research Tool (CREST) CD-ROM also located at NARA. I have also found important documents on the CIA Electronic Reading Room website (<http://www.foia.cia.gov>).

The first part of my book will be an in-depth organizational and administrative history of medical intelligence within the United States military beginning in 1933 to the present day, Armed Forces Medical Intelligence Center (AFMIC). I will attempt to trace the development of medical intelligence doctrine over the past 60 years. I will include an analysis of the intelligence cycle (i.e., tasking, collection, analysis, production, and dissemination) from the standpoint of medical intelligence, and using historical examples, will show how each element of the cycle works in this field. I also hope to discuss the role of the CIA Office of Scientific Intelligence/Medicine Division and Life Sciences Division in the production of medical intelligence for the US Intelligence Community, and specifically, the National Intelligence Surveys and various National Intelligence Estimates.

The second part of my book deals with "medical support for intelligence operations." This section will essentially constitute a history of the Office of Strategic Services (OSS) Medical Services Branch and its eventual evolution into the CIA Office of Medical Services. I will then attempt to describe the organizational and administrative history of CIA/OMS from its inception in 1947 under Dr. John Tietjen, to as close to the present time as possible. The focus of this section will be on the development of the basic policies and practices of OMS; historical problems related to the recruitment and retention of career physicians; the Medical Career Service Board, the development of individual OMS subunits such as the Operations Division, Field Support Staff, and the Psychiatric Division; the "VIP Health Watch" program, and the Regional Medical Officer program.

I would like to point out that several recent widely reported news stories have underscored the public's interest in the medical aspects of the U.S. intelligence effort. For example, extensive speculation has been made on the circumstances surrounding the exact cause of death of Palestinian President Yasir Arafat, the alleged poisoning of Ukrainian opposition candidate Viktor Yushchenko, and the health of Osama Bin Laden. These cases have highlighted the public interest in the government's effort to monitor the health of such individuals. The recent outbreak of SARS in China, and the proliferation of HIV/AIDS in Sub-Saharan Africa and India have highlighted the vulnerability of developing nations in handling emerging public health issues. The public has an interest in our nation's intelligence efforts to monitor epidemics and pandemics which may potential destabilize areas of strategic interest or possibly directly effect U.S. national security.

I have performed an exhaustive search of the open source intelligence literature and have found a veritable dearth of scholarly research on the field of medical intelligence or medical support for Agency operations. Moreover, extant literary coverage of the CIA Office of Medical Services is limited to one-line blurbs, mainly focusing on lurid tales of mind control experiments gone awry, assassination plots, or errant

psychological profiles of Daniel Ellsberg or former Haitian President Jean-Bertrand Aristide. I am confident that my book will make a unique scholarly contribution to the body of intelligence literature and shed a positive light on a fascinating and little known aspect of intelligence work. The declassification of even portions of those files, or information contained therein, would greatly assist my endeavor to make a substantial contribution to the public's understanding of the role of the Central Intelligence Agency and the government in these areas.

Sincerely, _____

Explanation of Exemptions

Freedom of Information Act:

- (b)(1) exempts from disclosure information currently and properly classified, pursuant to an Executive Order;
- (b)(2) exempts from disclosure information, which pertains solely to the internal personnel rules and practices of the Agency;
- (b)(3) exempts from disclosure information that another federal statute protects, provided that the other federal statute either requires that the matters be withheld, or establishes particular criteria for withholding or refers to particular types of matters to be withheld. The (b)(3) statutes upon which the CIA relies include, but are not limited to, the CIA Act of 1949;
- (b)(4) exempts from disclosure trade secrets and commercial or financial information that is obtained from a person and that is privileged or confidential;
- (b)(5) exempts from disclosure inter-and intra-agency memoranda or letters that would not be available by law to a party other than an agency in litigation with the agency;
- (b)(6) exempts from disclosure information from personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of privacy;
- (b)(7) exempts from disclosure information compiled for law enforcement purposes to the extent that the production of the information (A) could reasonably be expected to interfere with enforcement proceedings; (B) would deprive a person of a right to a fair trial or an impartial adjudication; (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy; (D) could reasonably be expected to disclose the identity of a confidential source or, in the case of information compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source; (E) would disclose techniques and procedures for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or (F) could reasonably be expected to endanger any individual's life or physical safety;
- (b)(8) exempts from disclosure information contained in reports or related to examination, operating, or condition reports prepared by, or on behalf of, or for use of an agency responsible for regulating or supervising financial institutions; and
- (b)(9) exempts from disclosure geological and geophysical information and data, including maps, concerning wells.

②

28 December 2004

Edmund Cohen
Director of Information Management Services
Central Intelligence Agency
Washington, DC 20505

SUBJECT: Decennial Review of Operational Files Designations

Mr. Cohen,

With regards to operational files designations, former CIA director Richard Helms in his memoir *A Look Over My Shoulder* said the following with regards to the U.S.S. Liberty A.G.T.R. 5, an "auxiliary general technical research" ship outfitted as an NSA/NSG (National Security Agency/Naval Security Group) mobile intelligence gathering unit, sailing in the Eastern Mediterranean Sea on 8 June 1967, when it was attacked by Israel Defense Forces from the air and sea:

"Israeli authorities subsequently apologized for the incident, but few in Washington could believe that the ship had not been identified as an American naval vessel. Later, an interim intelligence memorandum concluded the attack was a mistake and not made in malice against the U.S....

"I had no role in the board of inquiry that followed, or the board's finding that there could be no doubt that the Israelis knew exactly what they were doing in attacking the Liberty. I have yet to understand why it was felt necessary to attack this ship or who ordered the attack." [emphasis added]

I would like this "board's finding" that Mr. Helms mentions to be declassified so it can be released to the general public. I will also be submitting a FOIA (Freedom of Information Act, 5 U.S.C. § 552) request on this matter.

I look forward to your reply on this matter. I would appreciate your communicating with me by telephone or email, rather than by mail, if you have questions or even comments regarding this request. Thank you for your assistance.

Sincerely

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December 28, 2004

Edmund Cohen
Director of Information Management Services
Central Intelligence Agency
Washington, DC 20505

RE: Comments on Decennial Review of CIA Operational Files

Dear Mr. Cohen:

I am a historical researcher specializing in American intelligence agencies. I publish my work on the internet at [redacted] Two of my webpages, one on the OSS and the other on the counterinsurgency war in Colombia are also archived by the U.S. Army Special Warfare Center and School at Fort Bragg, N.C. These webpages contain about 4000 images of declassified documents, presented in outline form. I have also written webpages about F.B.I. counterintelligence programs, the Cuban revolution, and the political histories of Pakistan and Afghanistan.

Over the past four years, I've spent about 300 days working at the National Archives in College Park, MD. I have also worked in the archives at Ft. Bragg and Ft. McNair, in the FBI's FOIA reading room, and elsewhere. I have filed several FOIA requests with the CIA. These were either met with "Glomar" responses -- neither confirming nor denying the existence of any information -- or with a response that the CIA's records systems are not organized to accommodate my request. One of the CIA's "Glomar" responses has been in litigation for about three years now. I am so frustrated by my experience with the CIA that I'm writing a law review article on the circularity of the CIA's legal arguments, which have effectively circumvented the broad disclosure requirements of the Freedom of Information Act. I intend to vigorously pursue the judicial review route *pro se* until the CIA's disclosure policies change.

I am writing to express my interest and describe the historical value of a wide variety of CIA operational files. If they are not releasable yet, they should at least be preserved for future historians. Neither the CIA Information Act nor its legislative history (House Report No. 98-726 (I & II) and Senate Report No. 98-305) contemplate that decennial review be used as an opportunity to destroy files. The purpose of the CIA Information Act was to relieve the Central Intelligence Agency from the burden of processing unproductive FOIA requests for operational files, which almost invariably proved not to be releasable under the FOIA. At the same time, the CIA Information Act

was intended to improve the CIA's ability to process FOIA requests in a timely manner, preserving undiminished the amount of meaningful information releasable to the public under the FOIA, as well as to provide additional assurance of confidentiality to CIA sources. Nowhere in Section 702 of the National Security Act (50 USC 431) is the destruction of records contemplated in the decennial review process. The recent 9/11 Recommendations Implementation Act did nothing to change this.

The records of the OSS provide a model example for how CIA operational files should be released to the public. Those records have been well preserved and organized, and are perhaps the best primary materials available on the Second World War. As you may know, it was not until William Casey became DCI that the CIA would agree to release these files to the National Archives in unredacted form. I believe that the best solution for the CIA would be to send operational files more than 25 years old to the National Archives, and to let the National Archives declassify them. The FOIA process is time consuming and difficult for both sides. Time has shown that the unredacted records of the OSS may be released to the public without any identifiable harm to our national security. In the words of Victor Marchetti, what we are facing is a cult of secrecy which serves neither the public interest nor the interests of the CIA.

My personal interest is in the files of the Directorate of Operations, including the Covert Action Staff (CAS), Special Operations (SO), the Counterintelligence Staff, Regional Divisions of the Directorate of Operations, the National Collection Division (NCD), and the Foreign Resources Division (FRD). As the names of these departments have changed over time, I am also interested in their predecessors and successors. I am not personally interested in the Directorate of Science and Technology nor the Office of Security.

While Special Operations have received widespread media attention, political warfare practiced by the Covert Action Staff is probably more important from a historical perspective, and is entirely missing from any historical accounts I have seen. This means that the voting public is uninformed about many important aspects of our history. This is exactly the problem Congress was trying to solve in passing the Freedom of Information Act, and in its subsequent strengthening of the judicial review provisions of the FOIA.

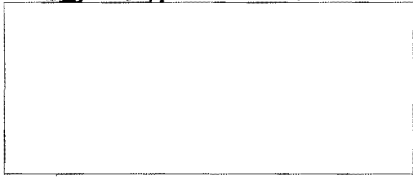
Appendix I to this letter consists of a list of known CIA special operations, adapted from the work of William Blum. I expect this is far from a complete accounting of even the SO files. Mr. Blum takes a decidedly negative view of the CIA's track record. Since the CIA does not release its operational files, Mr. Blum's accounting is the historical record. It is in the CIA's interest, and in the interest of the reputation of the United States, to allow others to add whatever context the CIA operational files may provide.

It is my sincere hope that my comments are taken into consideration in your decennial review. There is no doubt of the public interest in the preservation and release of CIA operational files. The mere mention of the CIA in connection with any event is

practically guaranteed to to be newsworthy. If the work of the CIA Directorate of Operations has been significant, then it is historically important.

I hope that the question you are facing is when the files will be releasable, and not whether they can be destroyed. To use the decennial review as an excuse to destroy CIA operational files would be contrary to the purpose of the CIA Information Act, and against the interests of both the United States and your agency.

Sincerely,



Appendix I - Known or Suspected CIA Special Operations

Operation PAPERCLIP -- Reinhard Gehlen, Hitler's master spy, had built up an intelligence network in the Soviet Union. After the war, the CIA created the "Gehlen Organization," a band of refugee Nazi spies who reactivated their networks in Russia. These included SS intelligence officers Alfred Six and Emil Augsburg (who massacred Jews in the Holocaust), Klaus Barbie (the "Butcher of Lyon"), Otto von Bolschwing (the Holocaust mastermind who worked with Eichmann). Gehlen inflated Soviet military capabilities at a time when Russia was still rebuilding its devastated society, in order to inflate his own importance to the Americans (who might otherwise punish him).

In 1948, Gehlen almost convinced the Americans that war was imminent, and the West should make a preemptive strike. In the 50s he produced a fictitious "missile gap." The Russians had thoroughly penetrated the Gehlen Organization with double agents, undermining the very American security that Gehlen was supposed to protect.

1947: Greece -- President Truman requested military aid to Greece to support right-wing forces fighting communist rebels. For the rest of the Cold War, Washington and the CIA backed notorious Greek leaders with deplorable human rights records.

1948: Italy -- The CIA influenced democratic elections in Italy, where Italian communists threatened to win the elections. The CIA bought votes, broadcast propaganda, threatened and beat up opposition leaders, and infiltrated and disrupted their organizations.

Colombia -- Jorge Eliecer Gaitan is assassinated during the formative meeting of the Organization of America States (OAS), leading to ten years of civil war in that country. The CIA's first director, Roscoe Hillenkoetter, demonstrably lies to a congressional investigating committee of the CIA's first "intelligence failure."

1949: Radio Free Europe -- The CIA creates its first major propaganda outlet, Radio Free Europe. Over the next several decades, it was illegal to publish transcripts of its broadcasts in the U.S.

Late 40's: Operation MOCKINGBIRD -- The CIA recruited American news organizations and journalists to become spies and disseminators of propaganda. Frank Wisner, Allan Dulles, Richard Helms and Philip Graham headed the effort. Graham was publisher of The Washington Post, which became a major CIA player. Eventually, the CIA's media assets included ABC, NBC, CBS, Time, Newsweek, Associated Press, United Press International, Reuters, Hearst Newspapers, Scripps-Howard, Copley News Service and more. By the CIA's own admission, at least 25 organizations and 400 journalists became CIA assets.

1953: Iran -- CIA overthrew the democratically elected Mohammed Mossadegh in a military coup, after he threatened to nationalize British oil. The CIA replaces him with a dictator, the Shah of Iran, whose secret police, SAVAK, was as brutal as the Gestapo.

MK-ULTRA -- Inspired by North Korea's brainwashing program, the CIA began experiments in mind control. Funded in part by the Rockefeller and Ford foundations, research included propaganda, brainwashing, public relations, advertising, hypnosis, and other forms of suggestion. While the CIA has testified that MKULTRA files were destroyed, researchers are highly doubtful.

1954: Guatemala -- CIA overthrew the democratically elected Jacob Arbenz in a military coup. Arbenz had threatened to nationalize the Rockefeller-owned United Fruit Company. Arbenz was replaced with a series of right-wing dictators whose bloodthirsty policies killed over 100,000 Guatemalans in the next 40 years.

1954-1958: North Vietnam -- CIA officer Edward Lansdale spent four years trying to overthrow the communist government of North Vietnam. The CIA also attempted to legitimize a tyrannical regime in South Vietnam headed by Ngo Dinh Diem.

1956: Hungary -- Radio Free Europe incited Hungary to revolt by broadcasting Khrushchev's Secret Speech, in which he denounced Stalin. It also hinted that American aid will help the Hungarians fight. The aid fails to materialize as Hungarians launched a doomed armed revolt, which only invited a Soviet invasion. The conflict killed 7,000 Soviets and 30,000 Hungarians.

1957-1973: Laos -- The CIA carried out approximately one coup per year trying to nullify Laos' democratic elections. In the late 50s, the CIA created an "Army Clandestine" of Asian mercenaries to attack the Pathet Lao. After the CIA's army suffered numerous defeats, the U.S. started bombing, dropping more bombs on Laos than all the U.S. bombs dropped in World War II. A quarter of all Laotians eventually became refugees.

1959: Haiti -- The U.S. military helped "Papa Doc" Duvalier become dictator of Haiti. He created his own private police force, the "Tonton Macoutes," who terrorized the population with machetes. They killed over 100,000 during the Duvalier family reign.

Mid to Late 1950s: Colombia -- The CIA manipulated Colombian politics through the Movimiento Revolucionario Liberal (MRL). The history of the counterinsurgency in Colombia has been one of continuous disaster.

1950s-1960s: East Pakistan -- now Bangladesh, the anti-communist program in East Pakistan may have laid the foundation for resentment and eventual independence from West Pakistan. The CIA's role, if any, is unclear.

1961: The Bay of Pigs -- The CIA sends 1,500 Cuban exiles to invade Castro's Cuba. But "Operation Mongoose" fails, due to poor planning, security and backing. The

planners had imagined that the invasion would spark a popular uprising against Castro — which never happens. A promised American air strike also never occurs. This is the CIA's first public setback, causing President Kennedy to fire CIA Director Allen Dulles.

Dominican Republic -- The CIA purportedly assassinated Rafael Trujillo, a murderous dictator Washington had supported since 1930.

Ecuador -- The CIA-backed military forced the democratically elected President Jose Velasco to resign. Vice President Carlos Arosemana replaced him; the CIA filled the now vacant vice presidency with its own man.

Congo (Zaire) -- The CIA purportedly assassinated the democratically elected Patrice Lumumba. Four years of political turmoil followed.

1963: Assassination of US President John F. Kennedy -- While many CIA files related to the assassination of President Kennedy have been released pursuant to an act of Congress, more than 25 years have passed since the assassination, and the CIA's remaining files should now be transferred to the National Archives for review.

1963: Dominican Republic -- The CIA overthrew democratically-elected Juan Bosch in a military coup. The CIA installed a repressive, right wing junta in his place.

Ecuador -- A CIA-backed military coup overthrows President Arosemana, whose independent (not socialist) policies have become unacceptable to Washington. A military junta assumed command, canceled the 1964 elections, and began abusing human rights.

1964: Brazil -- A CIA-backed military coup overthrew the democratically elected government of Joao Goulart. The junta that replaced it became one of the most bloodthirsty in history. General Castelo Branco created Latin America's first death squad to hunt down "communists" for torture, interrogation and murder. Often these "communists" were no more than Branco's political opponents. Later it was revealed that the CIA trained the death squads.

1965: Indonesia -- The CIA overthrew the democratically elected Sukarno in a military coup. The CIA had been trying to eliminate Sukarno since 1957, using everything from attempted assassination to sexual intrigue, for nothing more than his declaring neutrality in the Cold War. His successor, General Suharto, massacred between 500,000 to 1 million civilians accused of being communists. The CIA supplied the names of countless suspects.

Dominican Republic -- A popular rebellion broke out, promising to reinstall Juan Bosch as the country's elected leader. The revolution was crushed when U.S. Marines landed to uphold the military regime by force.

Greece -- With the CIA's backing, the king removed George Papandreous as prime minister.

Congo (Zaire) -- A CIA-backed military coup installed Mobutu Sese Seko as dictator.

1966: The Ramparts Affair -- The radical magazine Ramparts began a series of unprecedented anti-CIA articles. Among their scoops: the CIA had paid the University of Michigan \$25 million dollars to hire professors to train South Vietnamese students in covert police methods. MIT and other universities received similar payments. Ramparts also revealed that the National Students' Association to be a CIA front. Students were sometimes recruited through blackmail and bribery, including draft deferments.

1960s: Congress for Cultural Freedom -- This CIA operation recruited academics to promote cultural programs in the third world. Subsequent exposure has made the work of real humanitarians more difficult, as they are now suspected of being CIA spies.

1960s: Ford Foundation -- The "Ideological Offensive" of the Cold War involved major foundations and OSS psychological warfare veterans, co-opting leftist elements in the U.S. and steering them away from their radical positions. These foundations promoted the war in Vietnam and television as an instrument of psychological manipulation.

1967: Greece -- A CIA-backed military coup overthrew the government two days before the elections. The favorite to win was George Papandreous, the liberal candidate. During the next six years, the "reign of the colonels" - backed by the CIA - ushered in the widespread use of torture and murder against political opponents.

PHOENIX -- The CIA helped South Vietnamese agents identify and murder alleged Viet Cong leaders operating in South Vietnamese villages. According to a 1971 congressional report, this operation killed about 20,000 "Viet Cong."

1968: CHAOS -- The CIA has been illegally spying on American citizens since 1959, but with Operation CHAOS, President Johnson dramatically boosts the effort. CIA agents go undercover as student radicals to spy on and disrupt campus organizations protesting the Vietnam War. They are searching for Russian instigators, which they never find. CHAOS will eventually spy on 7,000 individuals and 1,000 organizations.

Bolivia -- A CIA-organized military operation captured legendary guerilla Che Guevara. The Bolivian government executed him to prevent worldwide calls for clemency.

1969: Uruguay -- The notorious CIA torturer Dan Mitrione arrived in Uruguay, a country torn with political strife. Whereas right-wing forces previously used torture only as a last resort, Mitrione convinced them to use it as a routine, widespread practice.

1970: Cambodia -- The CIA overthrew Prince Sihanouk, who was popular among Cambodians for keeping them out of the Vietnam War. He was replaced by CIA puppet Lon Nol, who immediately sent Cambodian troops into battle. This unpopular move strengthened the Khmer Rouge, which achieved power in 1975 and massacred millions of its own people.

1971: Bolivia -- After half a decade of CIA-inspired political turmoil, a CIA-backed military coup overthrew the leftist President Juan Torres. In the next two years, dictator Hugo Banzer had over 2,000 political opponents arrested without trial, then tortured, raped and executed.

Haiti -- "Papa Doc" Duvalier died, leaving his 19-year old son "Baby Doc" Duvalier the dictator of Haiti. His son continued his bloody reign with full knowledge of the CIA.

1972: Watergate Break-in -- President Nixon sent in a team of burglars to wiretap Democratic offices at Watergate. The team members had extensive CIA histories, including James McCord, E. Howard Hunt and five of the Cuban burglars. They worked for the Committee to Reelect the President (CREEP), which disrupted Democratic campaigns and laundered Nixon's illegal campaign contributions. CREEP's activities were funded and organized by another CIA front, the Mullen Company.

1973: Chile -- The CIA overthrew and purportedly assassinated Salvador Allende, Latin America's first democratically elected socialist leader. The CIA replaced Allende with General Augusto Pinochet, who tortured and murdered thousands of his own countrymen in a crackdown on labor leaders and the political left.

Watergate Scandal -- The CIA's main collaborating newspaper in America, The Washington Post, reported Nixon's crimes long before any other newspaper. The two reporters, Woodward and Bernstein, made almost no mention of the CIA's many fingerprints all over the scandal. It was later revealed that Woodward was a Naval intelligence briefer to the White House, and knew many important intelligence figures, including General Alexander Haig. His main source, "Deep Throat," was probably one of those.

1975: Australia -- The CIA helped topple the democratically elected, left-leaning government of Prime Minister Edward Whitlam.

Angola -- Henry Kissinger launched a CIA-backed war in Angola. The CIA backed the brutal leader of UNITAS, Jonas Savimbi. This polarized Angolan politics and drove his opponents into the arms of Cuba and the Soviet Union for survival. Congress cut off funds in 1976, but the CIA was able to run the war off the books until 1984, when funding was legalized again. This entirely pointless war killed over 300,000 Angolans.

1979: Iran -- The CIA failed to predict the fall of the Shah of Iran, a longtime CIA puppet, and the rise of Muslim fundamentalists who were furious at the CIA's backing of SAVAK, the Shah's bloodthirsty secret police. In revenge, the Muslims took 52 Americans hostage in the U.S. embassy in Tehran.

Lebanon -- CIA trains falangists on how to bomb civilians

El Salvador -- An idealistic group of young military officers, repulsed by the massacre of the poor, overthrew the right-wing government. However, the U.S. compelled the inexperienced officers to include many of the old guard in key positions in their new government.

Nicaragua -- Anastasio Somoza II, the CIA-backed dictator, fell. The Marxist Sandinistas took over government, and were initially popular because of their commitment to land and anti-poverty reform. Somoza had a murderous and hated personal army called the National Guard. Remnants of the Guard became the Contras, who fought a CIA-backed guerilla war against the Sandinista government throughout the 1980s.

1970s: India -- Morarji Desai, a top Indian government official, was reportedly in the pay of the CIA.

1980: El Salvador -- The Archbishop of San Salvador, Oscar Romero, pled with President Carter to stop aiding the military government slaughtering his people. Carter refused. Shortly afterwards, right-wing leader Roberto D'Aubuisson had Romero shot through the heart while saying Mass. The country soon dissolved into civil war, with the peasants in the hills fighting against the military government. The CIA and U.S. Armed Forces supplied the government with overwhelming military and intelligence superiority. CIA-trained death squads roamed the countryside, committing atrocities such as El Mozote in 1982, where they massacred between 700 and 1000 men, women and children. By 1992, some 63,000 Salvadorans were killed.

1981: Iran/Contra Scandal begins-- The CIA began selling arms to Iran at high prices, using the profits to arm the Contras fighting the Sandinista government in Nicaragua. The CIA's Freedom Fighter's Manual disbursed to the Contras included instructions on economic sabotage, propaganda, extortion, bribery, blackmail, interrogation, torture, murder and political assassination.

1983: Honduras -- The CIA gave Honduran military officers the Human Resource Exploitation Training Manual - 1983, which taught how to torture people. Honduras' notorious "Battalion 316" used these techniques, with the CIA's full knowledge, on thousands of leftist dissidents. At least 184 are murdered.

1986: Eugene Hasenfus -- Nicaragua shot down a C-123 transport plane carrying military supplies to the Contras. The lone survivor, Eugene Hasenfus, turned out to be a CIA employee, as were the two dead pilots. The airplane belonged to Southern Air Transport, a CIA front. The incident made a mockery of President Reagan's claims that the CIA is not illegally arming the Contras.

Iran/Contra Scandal -- Although the details had long been known, the Iran/Contra scandal finally captured the media's attention in 1986. Congress held hearings, and several key figures (like Oliver North) lied under oath to protect the intelligence community.

Haiti -- Rising popular revolt in Haiti meant that "Baby Doc" Duvalier will remain "President for Life" only if he had a short one. The U.S. fled the despotic Duvalier to the South of France for a comfortable retirement. The CIA then rigged the upcoming elections in favor of another right-wing military strongman. However, violence kept the country in political turmoil for another four years. The CIA tried to strengthen the military by creating the National Intelligence Service (SIN), which suppressed popular revolt through torture and assassination.

1989: Panama -- The U.S. invaded Panama to overthrow a dictator of its own making, General Manuel Noriega. Noriega had been on the CIA's payroll since 1966, and had been transporting drugs with the CIA's knowledge since 1972.

1980s: Afghanistan -- The CIA sponsors Gulbuddin Hekmatyar, Osama bin Laden, and an assortment of other unsavory Afghan mujahideen. While these operations seem to have contributed to the dissolution of the Soviet Union, they would come back to bite us later, as would our cohorts, the ISI. The CIA's knowledge of Charlie Wilson's contacts with Mossad also need to be investigated to determine Israel's influence in these events.

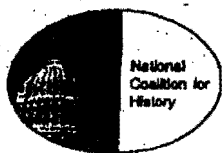
1980s: Iraq -- US supports Saddam Hussein and provides chemical weapons despite their use against Iran. The CIA's role is unknown.

1990: Haiti -- Competing against 10 comparatively wealthy candidates, leftist priest Jean-Bertrand Aristide captured 68 percent of the vote. After only eight months in power, however, the CIA-backed military deposed him. More military dictators brutalize the country, as thousands of Haitian refugees escaped the turmoil in barely seaworthy boats. As popular opinion called for Aristide's return, the CIA began a disinformation campaign painting the courageous priest as mentally unstable.

1991: The Fall of the Soviet Union -- The CIA failed to predict this most important event of the Cold War. This suggests that it had been so busy undermining governments that it hadn't been doing its primary job: gathering and analyzing information. The fall of the Soviet Union also robbed the CIA of its reason for existence: fighting communism.

1993: Haiti -- The chaos in Haiti grew so bad that President Clinton had no choice but to remove the Haitian military dictator, Raoul Cedras, on threat of U.S. invasion. The U.S. occupiers did not arrest Haiti's military leaders for crimes against humanity, but instead ensured their safety and rich retirements. Aristide was returned to power only after being forced to accept an agenda favorable to the country's ruling class.

2001: World Trade Center and Pentagon attacks -- While U.S. air defenses "stand down," soon-to-be DCI Porter Goss entertains Mahmud Ahmad, Chief of the Pakistani Inter-Services Intelligence, who is linked by the Indian media to a wire transfer of \$100,000 to the bank account of Mohammed Atta just before the attacks. Ahmad was relieved of service; however, the 9/11 Commission declined to investigate this most curious aspect of 9/11.



NATIONAL COALITION FOR HISTORY

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Edmund Cohen
Director of Information Management Services
Central Intelligence Agency
Washington D.C. 20505

January 18, 2005

Dear Director Cohen:

On behalf of the National Coalition for History, a consortium of over 70 history and archives related organizations, we would like to provide the following comments on the CIA decennial review of agency operational files.

The CIA Information Act of 1984 defines "operations" files as foreign intelligence or counterintelligence materials from the Directorate of Operations, scientific or technical documentation from the Directorate of Science and Technology, and investigations of foreign intelligence or counterintelligence sources from the Office of Personnel Security. The decennial review requires serious consideration by the Director of Central Intelligence (DCI) to re-examine and exempt and ultimately release files for their historical value or public interest. We urge you to do just that.

We believe that operational files older than 30 years can and should be declassified for several reasons. First, because of diminished if not non-existent security concerns and second, because of the potential for increased usefulness of these records to historians and political scientists whose speciality area is the history of U.S. intelligence.

Declassification serves the purpose of historical value stated in the CIA Information Act by enabling historians to gather a wide range of sources in their ongoing efforts to assess the past. The CIA's previous declassification efforts such those involving the JFK assassination records and Chile during the Cold War, and though not CIA records, the National Security Agency's 1996 decision to release of the VENONA decrypts all ended up possessing immense historical and public interest values. They also were all released without any harm to national security.

There is also little doubt that the history of U.S. intelligence efforts throughout the world is especially important and of interest to the public, especially given the contemporary threats posed by international terrorism. Declassification serves the public interest by enhancing the credibility of the CIA, offering lessons for future policy makers, and setting the record straight about important and at times controversial historical events. Declassification can dispel popular myths about a particular agency's involvement in a particular incident in American history. The release of the JFK assassination records, for example, set the record straight with respect to the CIA's involvement (in this case a lack of involvement) in the controversy surrounding the death of the president.

In advancing the objective of greater government openness, we urge reevaluation of the existent operational series file system. It is of concern to us that there is some evidence that the Agency may be inappropriately designating some materials as "operational" merely because they fall within the same file series as operational documents. Therefore, all such files should be carefully reviewed (or re-reviewed as the case warrants) and, when appropriate, materials should be released under provisions of current law.

Scholars also are finding it increasingly frustrating that promises made by high-ranking CIA officials relating to release of operational files have not always been brought to full fruition despite specific promises to do so; some such promises have even been made before Congressional committees. For example, on 28 September 1993, in comments made before the House Permanent Select Committee on

Sustaining Supporters: American Association for State and Local History; American Council of Learned Societies; American Historical Association; American Political Science Association; American Studies Association; Council of State Historical Records Coordinators; The History Channel; Midwest Archives Conference; National Council on Public History/NUPH; Department of History; Organization of American Historians; Society of American Archivists; Society for Historians of American Foreign Relations; Society for Military History; Southern Historical Association. Institutional Supporters: Association For Documentary Editing; Glider Lehman Institute of American History; History Associates, Inc.; Society for History in the Federal Government; Society of American Historians; Western History Association. Contributing Supporters: Over fifty other historical and archival organizations

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Intelligence hearing on "Increasing Accessibility to CIA Documents," DCI R. James Woolsey declared that he had "directed review for declassification of significant Cold War covert actions more than 30 years old." (See page 4 of the hearing record). In his testimony, the Director specified for review such CIA actions as activities in support of democracy in France and Italy in the 1940s and 1950s; support to Tibetan guerrillas in the 1950s and early 1960s; operations against North Korea during the Korean War; operations in Laos in the 1960s; coups attempts against and against Prime Minister Mossadeq in Iran, and operations in the Dominican Republic and the Congo. Little has come of any of these promises in terms of comprehensive review and release of relevant documentary materials.

The National Coalition for History also finds troubling recent assertions by some scholars that the CIA is not in full compliance with provisions of the Freedom of Information Act (FOIA) with respect to the subject files. The principles behind FOIA seek to create an informed electorate and open society, but there is a growing body of evidence that the CIA has been denying previously released information to researchers or refused additional information about previously declassified information that is of particular interest to historians. For example, one broad assertion of exemption is the Office of Electronic Intelligence information from 1962-66 that was already declassified for the National Archives. The CIA has reverted back to refusing to release information and asserted the claim that these files are relevant again to current activities.

We also note that the DCI Historical Review Panel conclusions and recommendations from September 1996 seem to have gone largely unimplemented. We believe most of those recommendations still have relevance today. The CIA should properly report this panel's findings and the CIA's response to these findings to appropriate congressional committees on Intelligence.

Finally, in recent years Western historians have gained access to historically significant documents from Russia, Eastern Europe and even the People's Republic of China that relate to the Cold War era. Gaining access to similar related material in this country remains frustrated by the efforts of federal agencies including the CIA in what appears to be an effort to implement outmoded and outdated intelligence laws. As a consequence, the official records of these former Eastern block countries that have been released may well be painting a picture of the CIA that may not be correct. Only the release of the Agency's own records will enable scholars to set the record straight.

In conclusion, we recommend the CIA consider targeted declassification of selected files or parts of such operational files, and project a final date for declassification of the older documents passed over by this review as well.

Thank you for your consideration of our comments.

Sincerely, [Redacted Signature]

R. Bruce Craig
Director

CC: Senate Select Committee on Intelligence
House Permanent Select Committee on Intelligence

FROM :

FAX NO. : 5124718986

Jan. 18 2005 11:11 AM P1



SCHOOL OF LAW

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M E M O R A N D U M

January 18, 2005

VIA FAX

TO: Edmund Cohen, Director
Information Management Services, CIA

FROM: Michael J. Churgin
Chair, Committee on Documentary Preservation
American Society for Legal History
Raybourne Thompson Centennial Professor in Law

SUBJECT: 69 Fed.Reg. 76449 (December 21, 2004)

The historical value of the three categories of CIA operational files noted in the Federal Register is significant, and the material should be made available to researchers and others to the maximum extent possible.

The best evidence of the historical use of the operational files might be the opening of records under the special act which created the JFK Assassination Records Review Board. The Board, composed in part of noted historians in the diplomatic and national security fields, used its authority to direct the disclosure of various operational records. The CIA acquiesced in some actions of the Board and unsuccessfully sought presidential review of other decisions. These records were of significant historical value.

The Committee on Documentary Preservation of the American Society for Legal History stands ready to assist. I may be contacted at the above address, by telephone at 512.232.1330 or by e-mail at mchurgin@mail.law.utexas.edu

JAN-19-2005 15:01

NHPRC



National Archives and Records Administration

8601 Adelphi Road
College Park, Maryland 20740-6001

JAN 19 2005

Edmund Cohen
Director of Information Management Services
Central Intelligence Agency
Washington, DC 20505

By fax: (703) 613-3020

RE: FR Doc. 04-27840, Notice of Decennial Review of Operational Files Designations

Dear Mr. Cohen:

Thank you for the opportunity to provide comments for consideration during the decennial review of the CIA's operational files. The National Archives and Records Administration (NARA) submits three comments pertaining to the historical value of these records.

In its Federal Register notice, the CIA provides broad outlines of three types of operational files within the Directorates of Operations, Science and Technology, and Security that are covered by this exemption. NARA believes that it would be in a better position to assist the CIA in identifying specific bodies of records for removal from exempted status if properly cleared and briefed NARA staff members were permitted to examine more closely the specific series to which the exemption applies.

Next, NARA recognizes that CIA has turned over to us reference copies of records that it has reviewed for declassification. We believe that this reference material (in particular copies of documents contained in the CREST system) is beneficial to the research community, and we encourage the CIA to allow NARA to accession the complete series from which these selected and reviewed documents originate. This will allow the archival integrity (provenance and original order) to be maintained. It may also increase the benefit to future researchers by improving the rate in which access demand requests are resolved.

Finally, many of the exempted records are permanently valuable and may be past due for accessioning. We encourage the CIA to work with appropriate NARA units to ensure that all such records are appropriately scheduled and that permanently valuable records are transferred in a timely manner. In particular, CIA has scheduled some series of records for transfer to NARA when 50 years old. It may be possible to use the required decennial review as a mechanism for blocking and transferring records to NARA. We recommend that series or blocks of series created between 1947 and 1955 and eligible for accessioning be transferred to us as part of this review process.

Sincerely,

John W. Carlin
Archivist of the United States

The National Security Archive

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January 19, 2005

Via Facsimile (703) 613-3020

Edmund Cohen
Director of Information Management Services
Central Intelligence Agency
Washington, DC 20505

RE: Request for Public Comment on CIA Decennial Review of Operational
File Designations, 69 Fed. Reg. 244, 76449-76450 (December 21, 2004)

Dear Mr. Cohen:

Thank you for the opportunity to comment on the Central Intelligence Agency's ("CIA") decennial review of the record categories in the Directorates of Operations and of Science and Technology and the Office of Security that are currently designated under the CIA Information Act of 1984, 50 U.S.C. Secs. 431-432, as exempt from the search and review requirements of the Freedom of Information Act ("FOIA"), 5 U.S.C. Sec. 552.

These comments are submitted on behalf of the National Security Archive ("the Archive"), a not-for-profit foreign policy research institute and library that uses FOIA to assemble collections of declassified government agency records documenting key U.S. foreign policy issues. The Archive's publications are widely distributed through both print and electronic means. In its work, the Archive regularly submits FOIA requests to the CIA and frequently receives denials of FOIA requests on the basis of the operational files exception. These denials are received even in cases involving records that are several decades old, that concern publicly acknowledged programs and activities about which there already is substantial declassified information in the public record, and that do not appear from their title or description to meet the statutory definition of an operational file.

Introduction

As Congress recognized when it enacted the CIA Information Act,

The [FOIA] has played a vital part in maintaining the American people's faith in their government, and particularly in agencies like the CIA that must necessarily operate in secrecy. In a free society, a national security agency's ability to serve the national interest depends as much on public confidence that its powers will not be misused as it does on the confidence of intelligence sources that their relationships with the CIA will be protected. Central Intelligence Agency Information Act, H. Rep. No. 98-726, Part I, at 9 (1984)

[The CIA Information Act] confirms that the CIA maintains information about which the public may legitimately inquire. It recognizes that the FOIA plays a vital part in maintaining the public's

An independent non-governmental research institute and library located at the George Washington University, the Archive collects and publishes declassified documents obtained through the Freedom of Information Act. Publication royalties and tax deductible contributions through The National Security Archive Fund, Inc. underwrite the Archive's Budget.

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Of Operational File Designations
Filed January 19, 2005
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faith in government agencies, including agencies like the CIA which must necessarily operate substantially in secret. The continued availability of information under the FOIA helps to foster public confidence that the powers of the CIA are not being misused and that the CIA is serving the national interest. Central Intelligence Agency Information Act, H. Rep. No. 98-726, Part II, at 6 (1984).

It is for these reasons that the Archive urges the CIA to rigorously examine its prior designation of records as operational and to narrow the categories of materials that are exempt from the FOIA. The significant barrier posed by the broad designation of records as operational and exempt from FOIA interferes with the ability of scholars, researchers, and the public to understand the history of U.S. intelligence and to learn from past experiences. Moreover, the CIA's practice with respect to its designation of records as exempt from the search and review requirements of FOIA will serve as a model for other intelligence agencies that have more recently been granted operational files exceptions and have been using them improperly.¹

These comments address the following issues:

- (1) The Characteristics of Protected Operational Files;
- (2) The Public Interest in and Historical Value of CIA Operational Files;
- (3) Denied Records That Should be Removed from the Operational Files Designation; and
- (4) Removal of Records Older than 40 Years from the Operational Files Designation.

The Characteristics of Protected Operational Files

The CIA's request to Congress that the Agency be provided protection from FOIA for operational files was premised explicitly on the representation that the types of files sought to be protected are so sensitive that there are virtually no circumstances under which a FOIA review would result in the release of material to the public. The statutory definition provides:

(b) "Operational files" defined

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*

¹ See Spy Agencies Abuse Freedom of Information Exemptions (June 11, 2003) (available at <http://www2.gwu.edu/~nsarchiv/news/20030611/>). For example the National Reconnaissance Office ("NRO") has invoked its own operational file exception - which applies only to records that describe scientific and technical means of surveillance - to refuse to search for records that were released with only partial redaction in response to a 1992 FOIA request and that discuss a wide range of historical and organizational matters. These include "Report to the President's Foreign Intelligence Advisory Board on the National Reconnaissance Program, January 1 to June 30, 1967" and "Report to the 40 Committee on the National Reconnaissance Program, July 1, 1970 to June 30, 1971." It also has refused to search for the Final Report of former Director of the NRO Hans Mark - a document that is currently publicly available on the CIA CREST system at the National Archives and Records Administration and that discusses a wide range of matters beyond scientific and technical means of surveillance. Similar abuses of the operational files exception have occurred with the National Geospatial-Intelligence Agency.

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which foreign intelligence or counterintelligence is collected through scientific and technical systems; and
(3) files of the Office of Personnel 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.

50 U.S.C. Sec. 431(b) (emphasis added).

As Congress explained when it passed the CIA Information Act, this language describes:

Only those files concerning intelligence sources and methods. These files concern the intelligence process as distinguished from the intelligence product. They include information on the identities of and contact with human intelligence sources, the various methods used to collect intelligence from human and technical sources, and day-to-day administration and management of sensitive human and technical intelligence activities. These files are distinguished from what may be called intelligence product files the function of which is to store the intelligence gathered from human and technical sources.

Central Intelligence Agency Information Act, H. Rep. No. 98-726, Part I, at 520-21 (1984) (section by section analysis).²

With respect to the Directorate of Science and Technology, Congress explained that it was seeking to protect only documentation of the "scientific and technical systems which collect foreign intelligence and counterintelligence." *Id.* at 21.

It was Congress's understanding that it would be possible for the CIA to easily distinguish between sensitive operational files and other files that should not be exempt from FOIA because of the "characteristics of CIA file systems." Central Intelligence Agency Information Act, H. Rep. No. 98-726, Part I, at 17 (1984). According to CIA testimony to Congress, the CIA maintained operational files in the Directorate of Operations for documents generated in the course of the conduct and management of intelligence gathering activities, but maintained raw and finished intelligence in separate files maintained by the Directorate of Intelligence. *Id.* at 17-18. The CIA also told Congress that policy matters, including operational policy matters, would be considered by CIA officials outside the Directorate of Operations and, even if eventually returned to operational files, they would be logged in the CIA's Executive Registry and remain subject to search and review. *Id.* at 19.

Based on this understanding of the special characteristics of the CIA filing system and numerous CIA assurances³, Congress considered *"it to be of primary importance in providing CIA relief from undue*

² See also Central Intelligence Agency Information Act, H. Rep. No. 98-726, Part I, at 5 (1984) (operational files describes "certain specifically identifiable CIA operational records systems, containing the most sensitive information directly concerning intelligence sources and methods."); see *id.* at 9 (same).

³ Legislation to Modify the Application of the Freedom of Information Act to the Central Intelligence Agency, Hearings before the Subcommittee on Legislation of the Permanent Select Committee on Intelligence, House of Representatives, 98th Cong., 2d Sess., at 5, 12 (1984) (statements of John N. McMahon, Deputy Director of the Central Intelligence Agency that "by removing these sensitive operational files from the FOIA process, the public is deprived of no meaningful information whatsoever.").

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 Of Operational File Designations
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FOIA processing burdens to preserve undiminished the amount of meaningful information releasable to the public under the FOIA." Central Intelligence Agency Information Act, H. Rep. No. 98-726, Part I, at 17 (1984) (emphasis added).

The Public Interest in and Historical Significance of CIA Operational Files

Despite the controls on operational files, thousands of pages of CIA records have been declassified to reveal important information about past CIA actions and policymaking in which there is a strong public interest in disclosure but that appear to come from record groups that fall under the operational files designation. These include numerous records that were released as part of the Kennedy assassination declassification project which was conducted pursuant to separate statutory mandate. Thus, in the case of the Kennedy assassination release, there were hundreds of cables from the CIA stations in Miami and Mexico City that would have been wholly unreachable through FOIA due to the operational files exception. Yet the release was justified by the strong public interest in access to the information – including the need to satisfy public questions and concerns about the assassination of a sitting president – and the passage of time.

A similar large scale release took place under the Nazi War Crimes Disclosure Act and resulted in 800 CIA name and subject files. See www.archives.gov/media_desk/press_releases/nr04-55.html. As the Interagency Working Group overseeing the matter recognized, these documents “alter[ed] our understanding” of certain aspects of the Holocaust, including “the failure of U.S. and Allied intelligence to understand how closely tied the ‘Jewish question’ was to the central goals of the Nazi regime; the ways in which U.S. financial institutions helped the German government between 1936 and 1941, and the extent to which U.S. and Allied government aided and protected war criminals after the war.” *Id.* In particular these records:

Show that at least five of Eichmann’s associates, each a significant participant in Hitler’s war upon the Jews, had worked for the CIA. Additionally, the records reveal that at least 23 war criminals or Nazis were approached by the CIA for recruitment. The documents help answer the question of how and why these war criminals were given employment, assistance, and, in two cases, U.S. citizenship by a nation that had lost more than 300,000 lives in World War II.

Id. All these records – which could have been held back as “operational files” – were released without any resulting harm. There is no question that these records are historically valuable and that there is a strong public interest in their release despite the fact that they are operational files.

Indeed, the Archive’s own research projects on U.S. relations with geographic areas including Guatemala, Cuba, and Chile have all relied on records released under special declassification projects that – due to the CIA Information Act – would not have been accessible to the Archive through FOIA. The information in these records has significantly affected public understanding about the history of CIA policies and

(note 3, cont.) See also Central Intelligence Agency Information Act, H. Rep. No. 98-726, Part II, at 6 (1984) (“CIA Executive Director Charles A. Briggs [] testified that the bill will not result in the withholding of any information that is now made public.”); Notice of Operational File Exemptions, 59 Fed. Reg. 40,339, 40,340 (Aug. 8, 1994) (acknowledging legislative history stating that the CIA Information Act of 1984 “will improve the ability of the CIA to respond to FOIA requests from the public in a timely and efficient manner, while preserving undiminished the amount of information releasable to the public under the FOIA.”).

operations in Latin America, U.S. intelligence relations with security services, and key human rights cases. In the case of Chile, operational records were released with no discernible damage to national security. These records are today being used as educational tools throughout the United States, and have contributed to advancing U.S. efforts at strengthening democracy and justice in Chile. Operational documents also have contributed to fostering international understanding of the history of terrorism in the Caribbean and the Southern Cone, which are relevant to U.S. efforts in the current war on terror.

Finally, the Archive has requested a number of records that were summarized and quoted in the Final Report of the 9/11 Commission, but were denied as operational records. In some cases the Archive is appealing these denials.⁴ Notably, however, there can be no doubt that the best selling 9/11 Commission Report documents matters of great public interest and historical value. Accordingly, the CIA should consider removing these items from the operational files designation so that records can be released as their sensitivity diminishes.

These examples demonstrate that the passage of time and changing circumstances in the world can affect the sensitivity of operational records even though the public interest in the records remains strong. These examples also show the viability of systematic declassification efforts for such files. By removing older records and records that the Archive and other commenters identify as historically valuable or of great public interest from the operational file designation, the CIA will facilitate a historical declassification effort that results in the release of comprehensive groups of records and that has a positive impact on the nation.

Denied Records That Should Be Removed From the Operational File Designation

The Archive's experience suggests that there are materials being blocked from search and review that do not qualify under the statutory definition of operational files. For example, histories of the Directorate of Science and Technology, its components, or its activities have been designated part of the Directorate's operational files and thus exempt from search and review-even when those histories cover activities that have been the subject of substantial declassification.⁵ Two of the requested histories had been specifically cited and referenced in other CIA documents that have been declassified. These include, for example, a history of the Office of ELINT (electronic intelligence) from 1962-1966, and any histories of the Office of Research and Development. Much about these offices (which no longer exist) has already been declassified and the National Archives & Records Administration has a number of articles from the CIA's

⁴ For example, many of the documents were not created by the Directorate of Operations, Directorate for Science and Technology, or the Office of Personnel Security, and thus should reside in non-operational files. Many also appear to be intelligence records that are not considered operational files. See Freedom of Information Appeal Lodged With Agency Release Panel (January 13, 2005) (Archive No. 20041375CIA174/ CIA No. F-2005-00359).

⁵ The requests were for: "History of Office of Special Activities from Inception to 1969," DS&T Historical Series, OSA-1, (April 1, 1969) (Request No. F-1994-01452 (appeal denied July 16, 2002)); Elizabeth Fisher, "History of the Office of ELINT to December 1966" (1968) (Request No. F-1994-01561 (appeal denied July 16, 2002)); histories of the Directorate of Science and Technology (Request No. F-1996-01465 (appeal denied July 16, 2002)); and histories of the Office of Research and Development (Request No. F-1998-02484 (appeal denied July 16, 2002)).

National Security Archive Comments on CIA Decennial Review
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Studies in Intelligence that recount ELINT operations⁶ and concern the Office of Research and Development.⁷

The same is true of the history of the Office of Special Activities from its inception to 1969. Between 1962 and 1969 the Office of Special Activities was responsible for the CORONA satellite reconnaissance program, the U-2 program, and the OXCART (A-12) program. Substantial aspects of these programs have been released, including all 800,000 CORONA images, a history of the U-2 program written by CIA's history staff⁸, and *Studies in Intelligence* articles on the histories of CORONA and OXCART.⁹ Similarly, a significant amount of information already has been released about the Directorate of Science and Technology.¹⁰

These histories are highly likely to contain extensive information beyond documentation of "the means by which foreign intelligence or counterintelligence is collected through scientific and technical systems." Moreover, the Directorate of Science and Technology informed the public in 1994 that it "does not maintain its records in distinct files," that "documents of all types are interspersed throughout the DS&T's components," and that "DS&T searches all of its records in response to a FOIA request."¹¹ If this is true, then the search is being conducted whenever these records are requested and the real issue is review. As described above, it is extremely likely that the majority of these histories are not so sensitive that they should be protected from search and review under FOIA. Just as the CIA removed from the operational files designation the files of the defunct Office of Policy Coordination and the inactive National Committee for a Free Europe and Asia Foundation projects in 1994, it should now remove from the designation the files of the Office of ELINT, the Office of Research and Development and the Office of Special Activities. The Directorate of Science and Technology played a key role in the collection and analysis of intelligence during the 1960s and beyond. Thus the files of the Directorate and its components are of significant value to historical treatments of intelligence during the Cold War. The CIA has recognized the value of making such information available to the public and historians in its releases of document collections and its sponsorship of conferences.

Notably, historical material was a matter of particular concern to Congress, which specifically raised questions about the disclosure of historical operations with the CIA during hearings on the CIA

⁶ E.g., William H. Nance, "Quality ELINT," *Studies in Intelligence* (Spring 1968); Gene Poteat, "Stealth, Countermeasures, and ELINT, 1960-1975," *Studies in Intelligence* (1998); Henry G. Plaster, "Snooping on Space Pictures," *Studies in Intelligence* (Fall 1964); Frank Elliot, "Moon Bounce ELINT," *Studies in Intelligence* (Spring 1967).

⁷ E.g., "ORD Milestones," (Sept. 1966) (NARA 1998 CIA Release); Inspector General, CIA, "Inspector General's Survey of the Office of Research and Development (Oct. 1972.) (NARA 1998 CIA Release).

⁸ E.g., Pedlow and Welsenbach, "The CIA and the U-2 Program, 1954-1974"; see also "Directorate of Science and Technology Decennial Review of Designated Files" (1995) (noting "DS&T now conducts FOIA searches and releases material on the research, development, and operations of U-2 and SR-71 reconnaissance aircraft, both of which were formerly in exempted files").

⁹ E.g., Thomas P. McIninch, "The OXCART Story," *Studies in Intelligence* (Winter 1971).

¹⁰ E.g., Donald E. Welzenbach, "Science & Technology: Origins of a Directorate," *Studies in Intelligence* (Summer 1986).

¹¹ See Archive Calls on CIA and Congress to Address Loophole Shielding CIA Records From Freedom of Information Act (October 15, 2004) (available at <http://www2.gwu.edu/~nsarchiv/NSAEBB/NSAEBB138/index.htm>) (reproducing statements provided at CIA meeting with members of the public on the occasion of the 1994 decennial review).

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Of Operational File Designations
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¹¹

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Information Act of 1984. For example, when asked whether a special study on the Berlin Tunnel Operation – a historical study – would remain subject to release under the FOIA, the then-Director of the Office of Legislative Liaison of the Agency, Clair George, confirmed that such “special studies will not be in designated [operational] files, this type of material will continue to be accessible.”¹²

In addition, the CIA has declared histories of acknowledged covert activities exempt from search and review even though the CIA Information Act excludes from the definition of an operational file “any special activity the existence of which is not exempt from disclosure under the [FOIA].” 50 U.S.C. Sec. 431(b)(2). Yet the CIA has refused to search or review “Covert Action Operations: Soviet Russia Division, 1950-1968”, which is one of many histories the CIA allowed journalist Evan Thomas to examine while he was writing *The Very Best Men: Four Who Dared*, his 1995 book on Richard Bissell and other key CIA officials. Documents about acknowledged covert activities are not protected by the CIA Information Act and must be reviewed for release. Moreover, the fact that a researcher was provided access to the document is an indicator that the sensitivity of the record has diminished over time. The covert action operations against the Soviet Union between 1950 and 1968 that are discussed in the document are an important part of the historical record of U.S. relations with the Soviet Union. Hence, any account of the U.S.-Soviet conflict is incomplete without a discussion of those operations.

In fact, from 1991-1998, the CIA actually committed to declassification of 11 CIA covert operations, including the 1948 Italian and French elections, the 1953 Iranian coup, the 1954 Guatemalan coup, the 1958 Indonesian coup, the 1962 Cuban missile crisis, support to Tibetan guerrillas in the 1950s-60s, operations against North Korea during the Korean War and operations in Laos in the 1960s, and operations in the Dominican Republic and the Congo. These publicly acknowledged special activities are not protected by the operational file exemption and are of tremendous interest to the public, both for the myth and reality of CIA involvement. The CIA has an opportunity as it reviews its FOIA and declassification policies during this decennial review to live up to the commitment made by three successive Directors of Central Intelligence¹³, and then broken.¹⁴ Systematic declassification projects

¹² Legislation to Modify the Application of the Freedom of Information Act to the Central Intelligence Agency, Hearings before the Subcommittee on Legislation of the Permanent Select Committee on Intelligence, House of Representatives, 98th Cong., 2d Sess., at 121 (1984).

¹³ See Recommendation of the CIA's Task Force on Openness, 1991 (DCI Gates accepted this recommendation in January 1992, promising “a bias toward declassification” of these documents) (“Initiate in the near-term the declassification of specific events, particularly those which are repeatedly the subject of false allegations, such as the 1948 Italian Elections, the 1953 Iranian Coup, 1954 Guatemalan Coup, 1958 Indonesian Coup and the Cuban Missile Crises in 1962 [and n]otify the public of the availability of the resulting materials.”); Testimony of DCI R. James Woolsey to Congress (Sept. 28, 1993) (“I have also directed review for declassification of significant Cold War covert actions more than 30 years old. These include the following: activities in support of democracy in France and Italy in the 1940s and 1950s; support to anti-Sukarno rebels in Indonesia in 1958; support to Tibetan guerrillas in the 1950s and early 1960s; operations against North Korea during the Korean War; and, operations in Laos in the 1960s. In reviewing these actions for declassification, we are building on the steps my predecessors took in announcing plans to declassify records on the Bay of Pigs operation, the coups against President Arbenz of Guatemala and against Prime Minister Mossadeqh in Iran, and operations in the Dominican Republic and the Congo.”); Letter to the Editor from DCI John Deutch, New York Times, Page A30, May 3, 1996 (“We have doubled the resources devoted to the agency's declassification of historically valuable records [W]e have also promised to review records of 11 covert actions of the cold war era.”).

¹⁴ See July 15, 1998 Statement of DCI George Tenet (“[W]e continue to face the dilemma of where to apply our available resources. [In addition to the Bay of Pigs and Guatemala, w]e also will initiate declassification reviews, as soon as resources are available, of the materials involved in the covert actions undertaken during the Korean War, and in the Congo, Laos, and

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related to these actions would provide historians with a treasure trove of information that is historically valuable and would serve the public interest.¹⁵

As you know, the CIA Information Act provides the CIA Director with the option of excluding categories of information from the operational files exception. These materials merit the exercise of the Director's authority to permit release because Congress intended the public to continue to have access to historical records of CIA activities and operations.¹⁶

**Removal of Records Older Than 40 Years
from "Operational Files" Designation**

Information that can harm the national security must certainly be protected. Indeed, we have an extensive system designed to protect such information, including a classification system, security clearance procedures, and careful FOIA officers who guard against disclosure of sensitive information. The CIA Information Act also is one of the components of this elaborate protective framework.

Experience shows that information requiring absolute secrecy at the time of its origin can be opened to the public after the passage of time without any harm to national security. This was recognized by Congress when it specifically required the decennial review to "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." 50 U.S.C. Sec. 432. The two most recent U.S. presidents enshrined this concept in the automatic declassification provisions of Executive Order 12958 (President Clinton) and Executive Order 13292 (President Bush), which require declassification when a document reaches the age of 25 years.

The diminished sensitivity of historical information also was recognized by the CIA's own history staff, which is comprised of individuals who have security clearances, who have had access to operational files

Dominican Republic during the 1960s. ... We will address the remaining five covert actions identified by my predecessors as soon as the others have been completed. The fact is, we do not have sufficient resources at the current time to review the documentation involved in these five remaining covert actions.... I have opted, therefore, to hold the reviews of these covert actions in abeyance for the time being.").

¹⁵ In opening up older files, the CIA should always ensure that chronological groupings of records are treated the same. As the National Archives and Records Administration ("NARA") recognized when NARA conducted its evaluation of records management in the CIA, researchers need "access to coherent blocks of organized records, not artificially-created collections." To learn from our past we need information that is both accurate and as comprehensive as possible. The selective release of individual records from a variety of different files, or releases that do not provide sufficient context, interferes with the development of historically important information.

¹⁶ Legislation to modify the Application of the Freedom of Information Act to the Central Intelligence Agency: Hearing before the Subcommittee on Legislation of the Permanent Select Committee on Intelligence, House of Representatives, 98th Cong., 2d Sess., 19 (1984) (statement of then-Deputy Director of CIA Office of Legislative Liaison Ernest Mayerfield in response to a question about CIA plans to review files of interest to historians: "[The DCI] can, if a case is made, ... or if he determines that a certain file ... is of such interest to historians or to other groups, ... redesignate a category of files or a portion of a category of files to permit access under the FOIA"); Intelligence Information Act of 1983, S. Rep. No. 305, 98th Cong. 1st Sess., at 18 (1983) ("The CIA assured the committee that 'the designation process will be a dynamic one, in which recommendations for the removal of files from designated status will be made to the DCI whenever such a lifting of the designation is appropriate either because of the passage of time or for some other reason.'").

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and who have the Agency's best interest at heart. During the 1994 decennial review, CIA history staff recommended that the CIA remove operational files designations from all records older than 40 years. The CIA rejected this in light of the advent of automatic declassification for records older than 25 years, explaining that the CIA history staff's recommendation was "unnecessary and impractical." Yet, there is no real logic to this determination, as the CIA has the ability to obtain an exception from automatic declassification for its operational files. So, a decision by the Agency to make all records older than 40 years (i.e. records from 1947-1965) subject to search and review under FOIA would be a significant advance in the CIA's accessibility.

Thus, the Archive urges the CIA to open up for FOIA requests operational files that contain documentation from a period 40 or more years ago. While there may still be materials in these files that are sensitive, it is likely that the vast majority of the materials will no longer be sensitive and that search and review of the files will be productive. In addition, by opening up these files for review, the CIA may find that it encounters non-operational documents included in operational files under now-obsolete filing systems, thereby restoring to FOIA access documents that never should have been protected.

Conclusion

An informed citizenry is one of our nation's highest ideals. Thus, much of our public policy is predicated on the idea that competition in the marketplace for ideas should be fair and unfettered. To this end, we support a free press, a diverse scholarly community, and an inquiring citizenry – all dedicated to ferreting out and publishing facts. The Freedom of Information Act is a critical component in this effort to permit public access to facts – facts about government. In a world in which war and terrorism are commonplace, an essential component of national security is an informed citizenry that, as a result of its education about issues, believes in and strongly supports its government. This is glaringly apparent at a time when American soldiers are being called on to risk their lives to protect national security and democratic ideals, when the public is held in a balance of terror, and when our resources are committed to establishing and maintaining our defense.

We are hopeful that this decennial review will result in the removal of a substantial body of records currently categorized as "operational files" exempt from search and review under FOIA. We urge the Agency to consider current realities, including the substantial changes in the world since the last decennial review, as it makes decisions about the public's interest in understanding the activities of the CIA and how those activities relate to U.S. foreign policy. Responding to requests under the Freedom of Information Act is the one direct obligation that the CIA has to the American public. The Agency will gain and retain the support of the American public by being as open as security will permit.

Thank you for considering our comments on the decennial review of the operational file designations. If you have any questions or we can provide any additional information, please do not hesitate to contact Meredith Fuchs or Thomas Blanton (202-994-7000).

Sincerely,

Thomas Blanton
Director

Meredith Fuchs
General Counsel

8

JAMES H. LESAR
ATTORNEY AT LAW
1003 K STREET, N.W., SUITE 640
WASHINGTON, D.C. 20001
TELEPHONE (202) 393-1921
FAX (202) 393-7310

January 20, 2005

Mr. Edmund Cohen
Director of Information
Management Services
Central Intelligence Agency
Washington, D.C. 20505

VIA FACSIMILE

Dear Mr. Cohen:

I write in response to the CIA's "Notice of Decennial Review of Operational Files," which solicits public comments.

Your decennial review takes place at a time when the United States is pushing to democratize other countries, most notably in Iraq. It seems evident from his inaugural address today that President George W. Bush intends to pursue this policy on a global basis. It is not clear, however, where and how this policy will be implemented. Will the means include covert actions against countries we do not think are democratic? Will it include covert actions against countries whose form of democracy we do not like?

I raise these questions because I think that your still secret files can shed enormous light on (1) the credibility which other nations are likely to attach to such a campaign in light of our past history, and (2) the benefits and liabilities of such covert actions.

I note, preliminarily, that soon after its inception the CIA began overthrowing democratically-elected governments in such countries as Iraq, Guatemala, Greece, and Chile. It also has plotted to assassinate foreign leaders in other countries. All operational records which pertain in any way to these events must be preserved and made accessible to the public under the Freedom of Information Act, the President John F. Kennedy Assassination Records Collection Act of 1992, and the Agency's inherent authority to disclose information when the public interest requires it.

Whenever a secret governmental organization acquires the power to overthrow other governments, there always lurks the horrendous possibility that it will ultimately use that power against a leader of its own government it does not like. The possibility of this is increases where those who have been involved in overthrowing other governments draw no distinction between overthrowing a government which is democratically elected and one that is not.

In the late 1970s Congress conducted an investigation of the assassination of President Kennedy which focused, in part, on the issue of whether certain CIA officers may have been involved in some way in the President's murder. It is now known that the CIA deliberately sought to obstruct the congressional inquiry into the Directorio Revolucionario ("DRE"), a CIA-funded militantly anti-Castro Cuban exile group and its embroilment with Lee Harvey Oswald, the alleged assassin of President Kennedy. To do this, the CIA called out of retirement George Joannides, who had served as the CIA's case officer for DRE in the months preceding JFK's murder. Neither he nor the CIA informed the House Select Committee on Assassinations that he had been in control of the DRE. He also failed to provide the information regarding the DRE which the HSCA had requested.

This disclosure that the CIA corrupted a congressional investigation into a matter of utmost national security significance, the murder of a president, is deeply troubling. I do not see how the CIA can ever have public confidence on any national security issue if it will not cooperate with a duly constituted congressional committee investigating the murder of a president.

The CIA is still withholding information on Mr. Joannides that should have been made available to Congress and the Assassination Records Review Board. In response to a Freedom of Information Act request and lawsuit, it has refused to search for operational records on Joannides, even though it is required to do so under the terms of the CIA Information Act of 1984 and the JFK Act. I therefore ask that pursuant to your decennial review you make accessible all operational records pertaining in any way to George Joannides or the DRE.

To a very considerable extent, the focus of serious investigators and researchers into the assassination of President Kennedy has been on a group of CIA officers who were involved in covert action operations in Guatemala, Cuba and Chile. In view of this, I request that all operational records pertaining to any of these subjects be made accessible to the public. This should include all records on persons who have figured in one way or another in those operations, such as David Atlee Phillips, E. Howard Hunt, John Martino, William Harvey, Win Scott, David Morales, Harold (Hal) Hendrix, Frank Sturgis (Frank Fiorini), Ted Shackley, and others. It should also include all records on prominent Cuban exile organizations such as Alpha 66, the Cuban Revolutionary Council, or any other anti-Castro organization with which the CIA had any relationship.

Finally, all operational records regarding any assassination attempts prior to 1974 should also be made accessible to the public.

8

Sincerely yours,

James H. Lesar

The National Security Archive

The George Washington University
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Fax: 202/994-7005
nsarchive@gwu.edu
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January 25, 2005

Via Facsimile (703) 613-3020

Edmund Cohen
Director of Information Management Services
Central Intelligence Agency
Washington, DC 20505

RE: Availability of Comments on CIA Decennial Review of Operational File Designations

Dear Mr. Cohen:

As you know, the National Security Archive filed comments last week on the Central Intelligence Agency's decennial review of the record categories designated as operational files exempt from search and review under the Freedom of Information Act. I understand that the CIA maintains its information technology systems apart from the Internet and perhaps that is why the CIA does not participate in the electronic docketing systems now used by most federal agencies, such as Regulations.gov. Nonetheless, proceedings such as the CIA's decennial review are of significant public interest.

I am writing, therefore, to request that the CIA consider methods of making the decennial review docket publicly available, perhaps by reproducing the federal register notice, public comments and related materials on the CIA's publicly accessible web site. Such an effort would demonstrate the CIA's desire to maintain a transparent process in an area that Congress recognized is of public concern. If the CIA does not wish to post the docket on its own web site, the Archive would be willing to post the Federal Register notice and the comments on its own web site for the convenience of the public.

I look forward to your response to this request. I would be happy to discuss this further with a representative of the Agency, and can be reached at 202-994-7000.

Sincerely,

Meredith Fuchs
General Counsel



27 September 2012

Reference: F-2009-01576

This responds to your 22 August 2010 letter appealing our 09 August 2010 final response to your Freedom of Information Act (FOIA) request for a copy of the comments submitted to the CIA for the 1995 and 2005 decennial reviews of the operational files exemption. Specifically, you appealed the determination to withhold portions of two documents on the basis of FOIA exemptions (b)(3) and (b)(6).

The Agency Release Panel (ARP) considered your appeal and determined that more information can be released in both documents, while withholding portions of material that must continue to be protected on the basis of FOIA exemptions (b)(3) and (b)(6). Exemption (b)(3) pertains to information exempt from disclosure by statute. The relevant statute is the Central Intelligence Agency Act of 1949, 50 U.S.C. § 403, as amended, e.g., Section 6, which exempts from the disclosure requirement information pertaining to the organization, functions, including those related to the protection of intelligence sources and methods, names, official titles, salaries, and numbers of personnel employed by the Agency. Therefore, in accordance with Agency regulations set forth in part 1900 of title 32 of the Code of Federal Regulations, the ARP partially granted your appeal. Sanitized copies of the documents are enclosed. In accordance with the provisions of the FOIA, you have the right to seek judicial review of this determination in a United States district court.

Sincerely,

A handwritten signature in cursive script, reading "Michele Meeks".

Michele Meeks
Executive Secretary
Agency Release Panel

Enclosures



APPROVED FOR RELEASE
DATE: 18 Sep-2012

Comments from the Public Concerning Decennial Review of CIA Operational File Exemptions

Received as of 1 January 1995

**NATIONAL COUNCIL on PUBLIC HISTORY**

Patricia Mooney-Melvin, President
(312)915-6528
FAX (312)915-6448

September 7, 1994

Edmund Cohen
Director
Information Management
Central Intelligence Agency
Washington, DC 20505

Dear Mr. Cohen:

I am writing on behalf of the National Council on Public History in response to the request for comments in the Federal Register concerning the historical value of CIA files designated under the CIA Information Act of 1984.

Although the Openness Initiative of the CIA has increased the amount of information available to the public, the list under "Declassification and Release of CIA Information of Historical Value" includes relatively few documents. The opposition of the historians testifying in 1983 to policies that closed off large bodies of records still is pertinent. Scholars need comprehensive access to records. Preselected groups of documents pulled from the files are not a satisfactory alternative. Instead, this practice raises more questions than provides answers.

The principle that the sensitivity of a record declines with age should be a part of all access policies. A most troubling aspect of the current designation of files to be exempt from the Freedom of Information Act is that there is no consideration of the age of documents. Thus, a 1950 document is as inaccessible as one from 1990, if it falls within one of the exempted categories.

If the CIA is to defend its mission in our rapidly changing world, there needs to be more information available that will allow a meaningful debate on the role of intelligence gathering and analysis for the conduct of foreign policy. Secrecy has hampered the CIA's ability to make a case for the value of intelligence assessments as well as handicapped the quality of analytical studies by insulating those who prepare intelligence assessments from dialog with specialists outside the agency.

The CIA, the American public, and the historical profession all will be well-served if there will be a full scale revision of the operational categories defined in the CIA Information Act of 1984. The categories need to be redefined in such a way to ensure that older records of historical value are accessible to scholars and the public.

Sincerely,


Patricia Mooney-Melvin
President, National Council on Public History

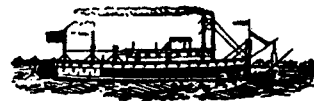
DEPARTMENT OF HISTORY • LOYOLA UNIVERSITY OF CHICAGO
820 NORTH MICHIGAN AVENUE • CHICAGO, IL 60611

ORGANIZATION OF AMERICAN HISTORIANS

OFFICE OF EXECUTIVE SECRETARY

112 NORTH BRYAN STREET • BLOOMINGTON, INDIANA • 47408-4199

TEL. NO. 812-855-7311



September 9, 1994

Mr. Edmund Cohen, Director
Information Management
Central Intelligence Agency

[Redacted]
Washington, DC 20505

Dear Mr. Cohen:

I write on behalf of the Organization of American Historians, a professional association whose twelve thousand individual and institutional members are dedicated to the promotion of teaching and research in American history. The OAH appreciated the opportunity to have a representative participate in your August 29 meeting to discuss the historical value of the subject matter in the CIA's operational files, and I believe that our concerns were well articulated at this meeting.

In response to your August 8 *Federal Register* notice requesting comments, we would like to stress that historians of American foreign relations are thoroughly convinced that the full and accurate account of U.S. foreign policy is dependent on access to CIA operational files. We therefore urge that there be a full-scale revision of the operational categories defined in the CIA Information Act of 1984 in order that older records except for a few personnel files within all these categories will be subject to FOIA requests.

Sincerely,

[Redacted]
Arnita A. Jones
Executive Secretary, OAH

AAJ/klh



400 A STREET S.E. WASHINGTON, D. C. 20003 | 202-544-2422

September 7, 1994

Edmund Cohen
Director, Information Management
Central Intelligence Agency
Washington, DC 20505

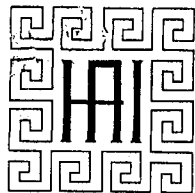
Dear Mr. Cohen:

I write on behalf of the American Historical Association, the nation's largest and oldest professional association for historians. We are concerned about unnecessary restrictions on scholars' access to the immensely valuable records of your agency and urge a full scale revision of the operational categories defined in the CIA Information Act of 1984. Specifically, we are troubled by the continuing resistance of the CIA to making older records subject to FOIA requests. Despite the agency's "openness initiative" in recent years, relatively few documents have been made public, and the historical record remains seriously deficient in regard to the role of intelligence gathering and analysis for the conduct of foreign policy. For example, the CIA's declassification refusals have undermined the State Department's effort to provide a record of American foreign policy through its Foreign Relations of the United States documentary series, even though the volumes cover events over thirty years ago. In reviewing the categories of records exempt from FOIA requests, we urge the CIA to take into account the age of documents and their declining sensitivity and take the appropriate steps to ensure that records of historical value are accessible to scholars and the public.

Please let me know if you have any questions regarding our position.

Sincerely,


James B. Gardner
Acting Executive Director



HISTORY ASSOCIATES INCORPORATED

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E-MAIL: HAIGEN@MCIMAIL.COM.

September 8, 1994

Mr. Edmund Cohen, Director
Information Management
Central Intelligence Agency
Washington, DC 20505

Dear Mr. Cohen:

In response to your request for comments on the operational file exemptions from the CIA Information Act of 1984 which appeared in the August 8, 1994, *Federal Register*, I would like to communicate my opinion as an historian. As a researcher, I have worked with classified records in both the Department of Energy and the Department of Defense. In addition, as a Professor of History at Rutgers, I recently taught an undergraduate course in the history of modern espionage.

The selected groups of released documents mentioned in the *Register* announcement appear quite interesting in themselves; however, I believe the Agency, the historical community, and national security could benefit from a more forthcoming policy.

I would suggest that the panel of historians, the Archivist, and the Librarian of Congress be reconstituted and reconvened to consider further procedures and categories of release. I would suggest that the panel be widened to include not only more historians and archivists, but experts from other disciplines who are familiar with declassification procedures and problems in other agencies. In particular, I would suggest that the panel should make recommendations toward reviewing agency recommendations of automatic exemption of documents from FOIA. It should consider further recommendations for transfer to NARA, particularly of documents over 30 or 35 years old.

Specific and detailed guidelines, similar to those developed for the Department of Energy regarding the declassification of nuclear information, could be applied in an automatic downgrading procedure. That is, operational files could be *presumed* to be declassifiable if they reach a certain age, unless they contain information pertinent to individual sources or projects still operating. Such information could be regarded as still sensitive.

Cohen, September 8, 1994

2

As many observers have noted, the holding of whole collections away from public and historical use has contributed to a sense of cynicism and to a general distrust of historical information, often feeding completely unfounded conspiracy theories about many events, frequently incorrectly blaming the Agency. In the area of foreign policy, it is extremely difficult for historians and for the public to come to a realistic appraisal of events in the absence of solid information about the role of the Agency. Much of what has been released and what has "leaked" about the Agency's role has helped an informed public come to an understanding that the Agency has been a responsible partner in the conduct of American foreign policy. More detail and a broader policy of opening early operational files would go far to enhance both the Agency's image and producing a realistic appraisal of its successes as well as its failures. However, more than a half-hearted level of release of documents is required to build public confidence in the work of the Agency and in its commitment to clarifying the record.

As noted by the State Department Advisory Committee on Historical Diplomatic Documentation, the Foreign Relations of the United States (FRUS) series is severely flawed by an absence of documents from the Agency pertinent to events in the Kennedy Administration.

For all of these reasons, I would suggest that the panel needs to be reconvened, broadened in its constituency, and that it needs to make further recommendations for a more genuine release of historical operational records.

Sincerely,



Rodney Carlisle
Vice President, History Associates Incorporated
Professor of History, Rutgers University

The Society for Historians of American Foreign Relations

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September 4, 1994

Edmund Cohen
Director of Information Management
Central Intelligence Agency
Washington, DC 20505

Dear Mr. Cohen:

I am writing as president of The Society of Historians of American Foreign Relations (SHAFR) with regard to the decennial review of CIA files. SHAFR has a membership of over 1600 historians, political scientists, and international relations experts. We teach tens of thousands of students each year and we write about American foreign relations and diplomatic history in popular magazines as well as scholarly journals. We write academic monographs for specialized audiences as well as popular histories for the general public.

As a group we applaud the publicly stated position of the CIA that it will extend greater access to its records and files. Several of the conferences sponsored by the CIA have been useful and informative. The three or four volumes of documents that have been an outgrowth of these conferences have added to the documentary record. The access that State Department historians now have to CIA files in compiling the Foreign Relations series is an especially positive step forward. The CIA Historical Office under the leadership of Ken McDonald has made a serious attempt to reach out to the larger scholarly community.

On the whole, however, CIA actions have not comported with its rhetoric, and the agency has hardly complied with the spirit of the 1984 law calling for openness. Most members of SHAFR do not dispute the need to protect some specially designated operational files and some specialized files related to science and technology, but we do object to the failure of the CIA to provide access to the vast majority of files that are of great historical interest.

The CIA has not presented any plan for the systematic review and possible declassification of entire groups of the agency's records. Although the CIA has released documents related to the Kennedy assassination, Raoul Wallenberg, and the Cuban missile crisis and although it is publishing the basic intelligence estimates of the Soviet Union and selected documents from the early years of the Truman administration, no plan has been submitted regarding the declassification of entire groups of records.

The CIA has not presented any description of its records and of its filing system. It has not done this even for the early years of the agency's existence. The public has absolutely no way to judge the significance of CIA releases of selected materials until it has a full and accurate listing of its records.

When documents have been released, for example, on the Cuban missile crisis, there has not been any enumeration of or citations to the files from which the documents emanated. Publication without citation violates the basic standards of documentary editing. Without provenance, scholars have no way of looking for related materials on the same topic or of checking to see whether the published documents are at all representative.

The CIA has refused to list or make available its finding aids. These aids and indices are indispensable for research.

The CIA official histories that have been declassified in recent years, for example on Walter Bedell Smith, provide almost no information at all about policy and intelligence assessment. They are organizational histories that are welcome, but they are of limited utility. They are scarcely comparable to the official histories of the Joint Chiefs of Staff, of the Office of the Secretary of Defense, and of the Atomic Energy Commission.

The CIA has created an historical advisory committee, but it has met infrequently. There is little evidence to suggest that the agency takes the advice of this committee seriously.

Scholars in general and members of SHAFR in particular welcome the CIA's rhetoric of openness. But we lament that the agency's actions have scarcely lived up to the 1984 law or comported with its public oratory. We fully understand the need to protect intelligence sources and methods, but we feel that vast numbers of files remain unjustifiably closed even after the breakup of the Soviet Union and the end of the Cold War.

The CIA should provide a full and accurate listing of its records and finding aids and it should present a plan for systematic review and declassification. Whenever releasing documents, the agency should provide citations to the files from which those documents emanate. The agency should confer frequently with its advisory committee on historical documentation and heed its advice (much as the State Department does with regard to its own historical committee).

I would be pleased to confer with you on any of the matters discussed above.

Sincerely, 

Melvyn P. Leffler
President

NATIONAL COORDINATING COMMITTEE
FOR THE PROMOTION OF HISTORY



Administrative Offices: 400 A STREET SE
WASHINGTON, DC 20003/(202) 544-2422

Dr. Page Putnam Miller
Director

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September 7, 1994

Mr. Ed Cohen
Director, Information Management
Central Intelligence Agency
Washington, DC 20505

Dear Mr. Cohen,

I appreciated the opportunity to participate in the August 29 meeting to discuss the historical value of CIA files designated under the CIA Information Act of 1984 and the process the CIA is using to conduct a decennial review of these files.

As I stated at the meeting, historians strongly urge the CIA to make major revisions in the categories of designated files to ensure that older records of historical value are accessible to scholars and to the public. While it was clear that the preliminary reviews being undertaken by the CIA were taking the age of records into consideration, my impression was that these preliminary reviews were recommending that only a few of the 13 subcategories of files listed in the Federal Register be redefined to make older records subject to FOIA requests.

Through its Openness Initiative the CIA has in the last few years made some select information available to the public. But the long list in the Federal Register under "Declassification and Release of CIA Information of Historical Value" includes relatively few documents. At the March, 1994 CIA Conference on the Origin and Development of the CIA in the Administration of Harry S. Truman, Dr. Anna Nelson of American University in a session titled "Research, Records, and Declassification Today" made clear that "the efforts of CIA public relations officials notwithstanding, the Agency has released very few of its records." The CIA collection in the National Archives consists mainly of intelligence estimates, articles from Studies in Intelligence, some documents used in the preparation of official CIA histories, records related to the JFK assassination that were required by law to be deposited at the National Archives, and some selected documents dealing with specific issues. Recent CIA declassification efforts have resulted in two archival boxes of material related to the Cuban Missile Crisis being placed in the National Archives. As Professor Nancy Tucker of Georgetown University pointed out at the meeting, so few documents raise more questions than provide answers.

Director of Central Intelligence, R. James Woolsey, stated before the House Permanent Select Committee on Intelligence on September 28, 1993, that the CIA was undertaking its openness initiatives "to help serious scholars and researchers understand recent history as completely as we can." He noted that "revelations about intelligence required the history of World War II to be rewritten," and suggested that "the information we have may require a rewriting of critical events in the Cold War." For many decades historians engaged in the study of American foreign policy relied primarily on State Department records. Today, the National Security Council, as well as the CIA, have pivotal roles and historians need access to the records of these agencies. Although the CIA may be engaged in an openness initiative, this effort appears only half hearted without providing access to the historical records. A major revision of the categories of exempted records would be a very concrete way to forward the Agency's Openness Initiative.

Historians and representatives of public interest organizations are hopeful that this decennial review will put in place policies that will allow the American people to have access to significant portions of its history that for too long have remained secret. While we were encouraged by your willingness at the August 29th meeting to hear our concerns, we are distressed by the CIA's unwillingness to declassify crucial historical documents for the State Department's Foreign Relations of the United States (FRUS) documentary series of 30 year old documents that provide an authentic and comprehensive presentation of American foreign relations will be distorted. The State Department Advisory Committee on Historical Diplomatic Documentation, which is mandated by law to have oversight over both the publication of FRUS volumes and the State Department's declassification program, noted in its August annual report that the Committee is preparing to contest declassification refusals by the Department of State and the CIA. The Committee has unanimously agreed that there would be serious distortions to the record of American foreign policy with at least two volumes on the Kennedy presidency, if these documents over thirty years old are not included. If the CIA is unwilling to declassify documents for the State Department's historical office, individual scholars feel that their chances for gaining access to older records of historical significance are not very good.

In closing, our primary recommendation is the incorporation of the principle that the sensitivity of a record declines with age be a part of the access policies for most categories of records. By far the most troubling aspect, for historians, of the current designation of files to be exempt from the Freedom of Information Act is that there is no consideration of the age of documents. A 1950 document is as inaccessible as one from 1990, if it falls within one of the exempted categories.

Please feel free to call me if I can assist you in any further way

Sincerely,



Page Putnam Miller, Ph.D.

The Nation.

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(202) 546-2239

Mr. Edmund Cohen
Director, Information Management
Central Intelligence Agency
Washington, DC 20505

August 15, 1994

Dear Mr. Cohen,

I am writing in response to the request for comments published in the Federal Register (August, 8, 1994, pp. 40339-40341).

I am a journalist, a historian, and author of a forthcoming book on the Central Intelligence Agency. (Blond Ghost: Ted Shackley and the CIA's Crusades, Simon and Schuster). Over the past five years, I have filed dozens of Freedom of Information Act requests with the CIA.

Before addressing the subject of the operational files exemption, I would like to offer some general observations about the CIA's handling of FOIA requests. I have been dismayed by the lack of responsiveness from the FOIA office. During a period in which the CIA has tried to become more open, I have noticed little change in the FOIA office. In the course of doing my book, I found the FOIA office to be uncooperative. When I requested information that had been previously released, it sometimes took over a year for the request to be processed. When I asked for an electronic list of documents previously released by the Agency's FOIA office, the office denied my request. I and the National Security Archive had to threaten a lawsuit to obtain such a list. And I found some responses to FOIA requests hard to believe.

For example, when I asked for materials regarding the tribespeople whom the Agency supported during the "secret war" in Laos during the 1960s, I was told that no such documents could be found. It surprised me that there were no intelligence reports--I was not asking for operational material--on the tribespeople and their leaders. When I asked an employee in the CIA FOIA office about this, he told me that such intelligence reports were probably kept in operational files which did not have to be searched. This suggested that the Agency was abusing the exemption for operational files--and that non-exempt material was improperly being stored beyond the reach of requesters. When I further inquired about this through a lawyer, the CIA maintained that the FOIA office employee had been

misinformed.

I can understand that it is difficult for an intelligence service to respond to outside inquiries for information. But while the CIA has made strides in its historical unit toward greater openness, the atmosphere in the FOIA office has struck me as being overly protective in almost a vindictive manner--to the extent that it is hard to trust the office when it reports it cannot find responsive documents.

As for the operational files, I believe that their exemption has not served FOIA requesters or the public interest. The request for comments notes that response time for FOIA requests is down and attributes that to the exemption. As I stated above, I have not seen evidence of the shortened response time. Moreover, I believe that the exemption keeps under wraps material that should be released and that can be released without damaging our national security or compromising sources and methods.

In the course of my research, I reviewed a list of every document the CIA has released under FOIA. (At the time, the only version of the list the CIA FOIA office would make available was a 4000-page computer print-out which listed the documents in random order.) I saw that much historically valuable material came from operational files. These documents were obviously released before the operational files were exempted. I found cables from stations and memos from station chiefs and other officers that were tremendously useful for historians and that had compromising sections deleted. Cordoning off operational files is a true disservice to history and the public interest.

An examination of the CIA files released in response to the JFK assassination records act confirmed my observations. After this record set was released last year, I spent several weeks going through each of the 60 or so boxes of material in what is called the CIA Segregated File. As you know, these records had to be released with a minimal amount of deletions, and most of these records came from operational files. Again, I found cables to and from CIA stations and hundreds (if not thousands) of memos written by officers of the operations directorate that are of great use for historians. Sources and methods were deleted, as they should be. Still the documents have much historical value. This record collection yielded many more documents useful for my research than all of my dozens of FOIA requests to the CIA.

The release of these records--as well as the work of the historical unit, which has also released operational files (e.g. the Cuban missile crisis documents)--demonstrates

that the Agency can review and make available documents from the operational files.

With the end of the Cold War, the Agency has indeed become more open. The historical unit is to be commended for its important efforts. But true openness allows for Agency outsiders to have a say in what historical materials are to be declassified and released. The only tool for doing so is the FOIA, and to CIA outsiders the FOIA office still seems dominated by an old-guard mentality. With the changes that have occurred in the world and the passage of time, the CIA should change its policy regarding the exemption of operational files. This exemption has undermined drastically the value of FOIA to historians and is a challenge to the spirit of the Act. Perhaps Langley should consider a partial exemption: say, exempting operational files only of the previous ten years.

I am confident that if the Agency wants to proceed with its devotion to openness that it can devise a way to include operational files in FOIA requests and safeguard those secrets that need to remain hidden. A review of previous released material and the JFK records shows that there is room for more openness. History will be better served by ending the operational file exemption, and that is undeniably in the public interest.

Thank you for considering my views. If I can be of any further assistance, feel free to contact me.

Sincerely,

David Corn
Washington editor

National Archives



Washington, DC 20408

September 7, 1994

Director, Information Management
Central Intelligence Agency
Washington, DC 20505

BY FAX

Dear Sir:

This is the National Archives and Records Administration response to your request for comments regarding the historical value of, or other public interest in, the CIA files designated under the CIA Information Act of 1984. Our Military Reference Branch, which is the custodian of CIA records in the National Archives, says that their Agency records are among the most heavily used and will probably continue to be so with the release of subsequent materials.

The Office of Records Administration, responsible for the appraising and scheduling of the disposition of Federal agency records, said that from the description in the Federal Register notice, the records clearly included those of continuing archival value and also, after consultation with the Agency records officer, appeared to be already scheduled. However, since the descriptions were not sufficient for them to relate them to specific scheduled records, they have asked the Agency for further details. Therefore, they limited their comments to the need for scheduling records any that may not already be scheduled.

If you have any questions, please call David G. Paynter at (202) 501-5638.

National Archives and Records Administration

September 7, 1994

VIA FAX and VIA MAIL

Edmund Cohen
Director, Information Management
Central Intelligence Agency
Washington, D.C. 20505

RE: Solicitation of public comment on CIA decennial review of operational files exemption, 59 Fed.Reg. 40339 (August 8, 1994)

Dear Mr. Cohen:

Thank you for the opportunity to comment on the Central Intelligence Agency's decennial review, currently underway as required by the CIA Information Act of 1984 (codified at 50 U.S.C. sections 431 and 432), of the record categories in the Directorates of Operations and Science and Technology and the Office of Security that are currently designated as exempt from the search and review requirements of the Freedom of Information Act (FOIA), 5 U.S.C. section 552.

These comments are submitted on behalf of the National Security Archive and the American Civil Liberties Union Center for National Security Studies. The Archive is a non-profit foreign policy research institute and library that extensively uses the FOIA at CIA and other federal agencies to build collections of declassified government agency records documenting key U.S. foreign policy issues. In its work, the Archive regularly faces serious barriers to fully documenting these issues due to the broad range of records now designated as "operational files" exempt from FOIA. The Archive has found that the lack of public access to CIA documents -- especially records now several decades old -- resulting from the current "operational files" designations severely restricts the ability of scholars, researchers, and the public to know about, understand, and learn from events in our nation's past in which CIA played a role. The ACLU is a nonpartisan organization dedicated to the principles of individual liberty embodied in the Constitution that works to ensure that broad access to government information, including the records of intelligence agencies, and other civil liberties are not eroded in the name of national security.

Introduction

The CIA's primary justifications for seeking the "operational files" exemption, as recorded at length in hearing testimony and the 1984 Act's legislative history, were its assurances that by allowing the CIA's director to designate large blocks of files for exemption from the FOIA's search and review requirements no noticeable shrinkage of the amount or type of information releasable to the public would result, responses to FOIA requests would be far quicker, and that declassification review of "operational files" was a waste of time because it never yielded significant useful material. Although the Agency's August 8 Federal Register notice itself recognizes that the purpose of the Act was to expedite the Agency's review of information for release to the public, we believe that the Agency is wrong in asserting that the Act's original purposes have been met. The Agency's FOIA operation, freed of its burden to search for and review "operational files", has not become more efficient but in many cases is far less responsive to public requests than before.

Our comments address two major issues. First, we recommend subject categories and file groups that should be removed from the "operational files" exemption based on their historical value or other public interest in them and the potential for declassifying and releasing to the public significant information contained in those records. Second, we describe the continuing delays and other serious defects in the CIA's FOIA practices that requesters have consistently experienced during the decade since the "operational files" exemption was passed and identify necessary reforms that are long overdue.

I. Records groups recommended for removal from "operational files" exempt status.

CIA witnesses at the congressional hearings prior to the 1984 Act's passage testified that the Agency's need for the "operational files" exemption was based on the premise that FOIA's

"search and review process[] results in an ever-present risk of exposure of sources and methods, and creates a perceived risk on the part of our sources and potential sources . . . At the same time, with this exclusion, the public would receive improved service from the Agency under the FOIA without any meaningful loss of information now released under the Act . . . In the case of records gleaned from operational files, virtually none of this information is released to the requester . . . The public derives little or nothing by way of meaningful information from the fragmentary items or occasional isolated paragraph which is ultimately released from operational files." 1

We acknowledge that there likely are files in the CIA's Directorates of Operations and of Science and Technology, and Office of Security that require continued secrecy in whole or in part on national security grounds to protect intelligence sources and methods. However, it has become increasingly clear over the past decade that there is much information contained in files now designated as exempt "operational files" which can and should be publicly released.

As the August 8 Federal Register notice soliciting public comment states, many thousands of pages of CIA records have in fact been declassified in whole or in part to reveal much information crucial to understanding past actions and policymaking involving the CIA. Many of these apparently come from record groups that fall under the current "operational files" designation. For example, the initial declassification and release to the public of scores of boxes related to the assassination of President John F. Kennedy, done pursuant to a separate statutory mandate, has resulted in the declassification of hundreds of cables from the CIA stations in Miami and Mexico City, materials that the current "operational files" exemption render wholly unreachable through FOIA. 2 Other examples

1 S. 1324. An Amendment to the National Security Act of 1947. Hearings Before the Select Committee on Intelligence of the United States Senate, 98th Cong., 1st Sess. 6. (Statement of John N. McMahon, Deputy Director of Central Intelligence).

2 The CIA's declassification of a handful of Cuban missile crisis records, cited in the Federal Register notice as another example of CIA's declassification efforts reveals the problems inherent in too broadly exempting whole record groups from FOIA's search and review requirements. Although the 100-odd documents declassified in 1992 and published in a book distributed at its conference on the crisis were important and useful, CIA's actions here ended up not being particularly useful to researchers and scholars because the documents were taken out of the context of the files from which they came, their origins

of CIA records relating to once-highly sensitive intelligence operations and special activities but declassified and made publicly available in the recent past, which can serve as models for types of files that can be removed from the "operational files" exemption, include:

- * the Penkovsky case, one of the CIA's most important intelligence operations;
- * covert activities against Cuba in the early 1960s, including details of assassination plots against Castro and their planning;
- * covert political and psychological warfare in western Europe, e.g., Germany; and
- * intelligence findings referring to and drawing on data provided by U-2 and satellite photography.

Thus, it is critically important to take the opportunity provided by this decennial review to limit the number of records and record groups designated as exempt "operational files."

If the review the Agency is undertaking here is to have a useful and lasting impact, it should seek not just to identify particular subjects that should be deemed eligible for FOIA search and review but also establish a set of workable, common-sense standards to apply in identifying record groups for removal from the "operational files" category in the future. The 1984 Act does not limit the Agency's review of designations to once every ten years but only requires that at a minimum a review be done decennially. As the "operational files" designations currently operate, they treat a file or document from 1954 no differently from one generated in 1994. In adopting such standards, we encourage the Agency to take into account the passage of time, recognize that changing circumstances in the world require flexibility in evaluating what needs continued secrecy, and incorporate a variety of review strategies such as bulk declassification. These standards should also require that when documents or record groups are identified for removal from the "operational files" exemption, the declassification review should incorporate markings that indicate where and why information has been redacted, from what agency component and file group the records originated, and provide access to contextual information about the entire set of records from which the document or file group came.

A. Directorate of Operations Files.

While not exhaustive, the following list identifies file groups in the Directorate of Operations that should be removed from the current "operational files" designations of records exempt from search and review:

- * Records related to U.S. government support for non-communist political and social movements in Western Europe, especially during the early years of the Cold War from 1947 through the mid 1950s. This includes material relating to support for anti-communists in the 1948 Italian election, support for the Force Ouvriere in France during the late 1940s, and Psychological Strategy Board activities in the 1950s;

were not identified, nor was the scope and range of materials not declassified for the conference described.

In contrast, in response to a lawsuit brought by the National Security Archive in 1988, the State Department over a period of time declassified and released in whole or in part several thousand documents on the crisis, many of them formerly classified at the "Top Secret/Eyes Only" level and no less sensitive than the documents on the crisis that are still being kept secret by CIA. These declassified State Department documents, now housed at the Archive (and disseminated to the public through an indexed microfiche collection containing over 15,000 pages of documents and a document reader) provide a far more comprehensive view of the event than the CIA's selected declassification of only a few records possibly can.

- * Records related to political and economic warfare against communist regimes in eastern Europe, for example U.S. government support for WIN in Poland;

- * Records related to covert political activities in the third world, including Guatemala in 1954, Iran in 1953, Indonesia during the late 1950s and early 1960s, Syria in 1957, and those records designated by the CIA's Center for the Study of Intelligence for block declassification (for which no timetable for release been publicly announced), including France in the 1940s, Italy during the 1940s and 1950s, North Korea during the early 1950s, Tibet in the 1950s and 1960s, the Bay of Pigs operation in 1961, and the Congo, the Dominican Republic and Laos in the 1960s; and

- * Files currently included in the "Obsolete Category", as described in the August 8 Federal Register notice.

We also strongly recommend that the CIA affirmatively state as part of this review that it will not deem "assassination records" under the President John F. Kennedy Records Collection Act of 1992 to be "operational files" that are exempt from search and declassification review under the terms of the CIA Information Act of 1984.

B. Directorate of Science and Technology files.

We recommend the removal of record groups in the Directorate of Science and Technology from the "operational files" exemption based on their historical value and the likelihood that significant amounts of information can be released after declassification review without harm to national security. Examples of record groups from this directorate that we believe could and deserve to be made eligible for declassification review and public release include records related to the history of the U-2 program, the early years of the reconnaissance satellite programs, and on early efforts to collect data on the Soviet nuclear program.

An instructive perspective on the suitability of files from the Science and Technology Directorate, in particular satellite imagery, for inclusion in FOIA search and review procedures is contained in an observation by Admiral Bobby Ray Inman at a conference a few years ago organized by the Carnegie Endowment for International Peace:

"Some years ago, Hans Mark [then director of the National Reconnaissance Office] and I conspired to declassify U.S. satellite imagery. We believed that making quantities of that imagery selectively available would help inform public debate. We were eminently unsuccessful--not because of the raging policy debated: we might have won that. Instead, lawyers carried the day by rendering the judgement that the Freedom of Information Act, in their opinion, made it very clear that if selected photos were released, then all photographs derived from all systems would become fully subject to the Freedom of Information act process, meaning a laborious and expensive review process for everyone involved." 3

We believe that the CIA should, as it undertakes its review of the current "operational files" designations, adopt Admiral Inman's and Hans Marks' conclusion, based on their extensive experience with imagery, that at least some of these materials can be safely declassified and released to the public based on evaluation of the materials' particular nature and the

3 B.R. Inman, in M. Krepon, et al., Commercial Observation Satellites and International Security at 5 (St. Martin's Press, in association with the Carnegie Endowment for International Peace, 1990).

contribution to the historical record and informed debate that public release would provide.

Similarly, we believe that CIA should consider including some categories of signal intelligence records in the files removed from the "operational files" exemption. SIGINT, particularly COMINT (and especially the cryptanalytic portion of COMINT) traditionally has been treated as the most sensitive of sources -- so much so that some material relating to U.S. cryptanalytical successes in the 1920s is still classified at the "Top Secret" level. Yet at the same time, the government has declassified historical material concerning COMINT/cryptanalysis from World War II. Other COMINT material has been made public on selected events, such as the C-130 incident in the 1950s, the KAL-007 downing, and the Berlin nightclub bombing. The most useful COMINT that could be declassified is historical material that has been written about extensively and the declassification of which would be of great use to scholars -- for example, VENONA material related to Soviet espionage in the U.S. and Britain.

C. Office of Security files.

As described in the August 8 Federal Register notice and based on our experience with government records, the files of the Office of Security appear the least likely of the three main categories of exempt "operational files" to produce significant releasable information of great interest to scholars, historians, and students of intelligence policymaking. We encourage the CIA to remove from the "operational files" exemption all records in this office that may appear eligible for declassification review and release based on the passage of time, changing circumstances, and their historical and public interest value. Given the finite resources available for the Agency's review of records for removal from the current "operational files" designations, we suggest that the bulk of those resources be focused on identifying files in the directorates of Operations and of Science and Technology rather than on those of less broad significance and interest in the Office of Security.

II. Reform of CIA's FOIA practices.

In hearings before Congress seeking support for passage of the CIA Information Act, representatives of the CIA repeatedly promised that "[t]he public can only stand to benefit" from an "operational files" exemption to the FOIA because the law's "reduced administrative burden will permit the CIA to respond to requests more quickly, thus providing more useful and timely information." ⁴ Congressional support for the law was based on the belief that "this legislation does not frustrate the essential purposes of the FOIA. Requesters will continue to have access to CIA files containing the intelligence product and to information on policy questions and debates on these policies." ⁵ In our experience as frequent FOIA requesters at CIA, this has not turned out to be the case.

A. Use of "glomarization" to avoid searches for requested records.

Over the years an increasingly large percentage of our requests have not been processed on the grounds that "the agency may neither confirm nor deny the existence or nonexistence of records responsive to your request." This overreliance on "glomarization" has been extended even to requests for types of records other agencies routinely produce

4 Hearings on S. 1324, supra note 1, at 8.

5 Id. at 2 (Statement of Chairman Barry Goldwater).

under FOIA such as biographical records on foreign political leaders, basic information that the CIA as an intelligence organization should be compiling if it is not doing so now. See, e.g., Exhibit A (refusal to confirm or deny existence of records containing biographical information on certain Czech political leaders involved in the country's reform movement in 1967-68, including Alexander Dubcek).

Moreover, despite acknowledgement from the CIA Office of General Counsel that non-designated "operational files" remain subject to search and that materials contained in "operational files" that are referred to by "markers" in non-operational files are also subject to FOIA, we cannot identify a single category where it appears that such searches are in fact undertaken in response to FOIA requests. See Exhibit B, copy of July 19, 1990 letter to the Center for National Security Studies from the CIA Office of General Counsel.

B. Continuing multi-year delays in receiving responses to requests.

It is simply not correct, as claimed in the August 8 Federal Register notice, that "a primary goal of the Act [to hasten FOIA response time] has been and continues to be met." It is true that "the major benefit to the public from this legislation" was, in the words of a CIA official, that:

"FOIA requesters now wait two to three years to receive a final response to their requests for information when they involve the search and review of operational files within the Directorate of Operations . . . [I]f this bill is enacted, I assure you that every effort will be made to pare down the queue as quickly as possible. This would surely be of great benefit if the public could receive final responses from the CIA in a far more timely and efficient manner. 6

Another CIA representative summarized the delay situation in 1984 and predicted improvements for the future in this way:

"It takes about 2 or 2 1/2 years today to process a request if it involves Directorate of Operations records. *If it does not involve the Directorate of Operations, it can take less, say up to 6 months to clear a case. We are hopeful that with the passage of this bill we will be able to respond in terms of weeks, or at most, months, to get a request back to the public.* The DDO queue is by and large the holdup at the moment. They have the bulk of our workload, and with some of the cases dropping out with the passage of this bill, we believe that the flow of materials throughout the Agency would be enhanced." (emphasis added) 7

The current median time lapse cited in the August 8 Federal Register notice of 2.4 months before requesters receive substantive responses to their FOIA requests is not even close to the delays we, as regular CIA requesters, have experienced for years. Nor has the average processing time we have experience even been close to the CIA's estimate of 6 months or less for non-operational files. Instead, based on our analysis of hundreds of requests filed

6 Hearings on S. 1324, supra note 1, at 8.

7 Legislation to Modify the Application of the Freedom of Information Act to the Central Intelligence Agency. Hearing before the Subcommittee on Legislation of the Permanent Select Committee on Intelligence, House of Representatives, 98th Cong, 2d Sess. 23 (1984)(testimony of Larry Strawderman, Chief, Information and Privacy Division, Central Intelligence Agency).

since 1984, our average delays in 1989 and 1990 were three to four years, and in 1992 the median time before a substantive response still stretched to two years or more. Worse, even after waiting several years for a response, the end product is often the release only of documents already in the public domain, such as Foreign Broadcast Information Service records. See, e.g., Exhibit C (of eight documents retrieved after a three-year wait, six FBIS documents were released and the two substantive policy documents denied in full).

Those requests for which we have received a response in six months' time or less have all, in our experience, been complete denials, "glomarizations" (refusals to confirm or deny that CIA has documents responsive to the request), or requests in which the CIA did no new search or declassification review but only pulled from its database of previously released FOIA documents (called "ORIS") a handful of materials, sometimes last reviewed for declassification several years before the request was filed.

C. Requests rejected as "unsearchable" or "requiring research".

Increasingly, bureaucratic hurdles imposed by the CIA's FOIA operation make it extremely difficult for requesters to use the FOIA in a meaningful fashion. For example, the CIA regularly refuses to conduct searches in response to requests on the alleged grounds that the subject of the request is "unsearchable" -- a response we receive from no other agency in the federal government. No other agency in our experience has responded to a narrowly-drawn request like the following one for "copies of all items concerning the People's Republic of China in the National Intelligence Daily from June 1-30, 1989" by stating:

"Your request as stated is unsearchable in our records systems. The FOIA does not require us to perform research or create records for a requester. Neither are we required to study a body of material to see if any of it is related to a specific event, activity, or incident. To study a body of material to see if any of it relates to the specifics of your request would constitute research which is neither required nor authorized under the FOIA."

See Exhibit D, July 13, 1994 letter from CIA to the National Security Archive. Even more astonishing was the rejection as "unsearchable" of a request for retrieval and release of two public statements issued by CIA itself discussing congressional testimony on and CIA information regarding the Banca Nazionale del Lavoro (BNL) affair. Id., August 9, 1994 letter from CIA to the Archive. (Other examples of requests rejected as "unsearchable" are also found at Exhibit D.) Given that a reasonably described request for records is all that the FOIA requires to trigger an agency search for responsive documents, these "unsearchable" responses to precise, narrowly-worded requests frustrate the requester and betray the access purposes of the Freedom of Information Act. Nor do practices like these tend to convince the public that the CIA takes its FOIA responsibilities seriously in the wake of having been granted its unique waiver from searching for and processing "operational files."

D. Inadequate searches.

The CIA's refusals to conduct even preliminary searches and the small number of documents generally produced in response to requests is especially troubling to us given the existence of the Agency Records and Information System ("ARCINS"), which contains "subject listings down to the folder level" of over 30 million records. Searching additional databases maintained by various directorates, such as the Directorate of Intelligence's three central data bases which index raw and finished intelligence reports at the document,

not merely folder title, level, should produce even more documents in response to requests, even if portions of them are ultimately denied under a FOIA exemption. See Exhibit E, excerpt from June 27, 1994 Advisory Committee on Human Radiation Experiments Staff Memorandum re "Methodological Review of Agency Data Collection Efforts: Initial Report on the Central Intelligence Agency Document Search" (describing CIA databases able to access agency records).

It is difficult to believe that any database at all was used in processing a recent request from the National Security Archive for the declassification and release of copies of four intelligence reports on the BNL affair, all of which were provided by the CIA to the Senate Select Committee on Intelligence and were specifically referred to in a letter from that committee to then Director Robert Gates. The response to this request was, again, that it was considered "unsearchable" and included the same boilerplate language quoted above as the rationale for refusing to process the request. See Exhibit F, letter from CIA to the National Security Archive dated July 1, 1994 rejecting request and appeal letter from the Archive dated August 9, 1994, with attached Congressional correspondence listing the CIA documents sought in the request. We urge the Agency to encourage all components to fully utilize all databases and other finding aids at their disposal to conduct adequate searches for records requested under the FOIA.

Conclusion

We are hopeful that this decennial review will result in removal of a substantial body of records currently categorized as "operational files" exempt from the search and review requirements of the FOIA. As part of this review, we encourage the establishment of standards for evaluating and removing additional record groups from the exemption in the future on a regular basis which reflect current realities, not outdated assumptions, about releasability to the public. We also urge the CIA to demonstrate that it takes seriously its statutory obligations under the FOIA and to commit to cure the serious problems with its current FOIA process, as described above, to comply with law and make the Agency more responsive to the public it serves. Adopting more user-friendly practices, including establishing a public reading room containing copies of material previously released by CIA under FOIA, are crucial if the CIA's FOIA practices are ever to reach some level of credibility with the public. Without a major overhaul of the CIA's FOIA operation, it will be increasingly difficult to justify the CIA's continued exemption, unique in the government, of large record groups from the scope of the FOIA.

We greatly appreciated the opportunity on August 29 to meet at CIA headquarters with many of the CIA staff intimately involved in this review to share our ideas on what needs to be done and how best it can be accomplished, and believe that the meeting was a very useful first step. If you have any questions or if we can provide further information or assistance, please do not hesitate to contact Sheryl Walter at the National Security Archive at (202) 797-0882 or Kate Martin of the ACLU/CNSS at (202) 675-2327.

Sincerely,



Sheryl L. Walter
General Counsel
National Security Archive



Kate Martin
Director
ACLU Center for National Security Studies

Attachments

Central Intelligence Agency



Washington, D.C. 20505

940163 CIA007

08 MAR 1994

RECEIVED MAR 10 1994

Mr. William Carnell
The National Security Archive
1755 Massachusetts Avenue, N.W.
Suite 500
Washington, D.C. 20036

Reference: F94-0294

Dear Mr. Carnell:

This is to acknowledge receipt of and is a final response to your 10 February 1994 Freedom of Information Act (FOIA) request referenced above.

Specifically, your request was for copies of "any and all biographical information on the following political leaders of Czechoslovakia, all of whom were involved (on one side or another) in that country's reform movement 1967-1968:

Alexander Dubcek
Antonin Novotny
Ordrich Cernik
Vaclav Prchlik
Jiri Hendrych
Drahomir Kolder
Cestmir Cisar
Miroslav Mamula
Ludvik Svoboda
Gustav Husak
Josef Spacek
Martin Vaculik
Alois Neuman
Jan Masaryk
Zdenek Mlynar
Bohuslav Lastovicka
Josef Lenart
Jiri Hajek"

The CIA may neither confirm nor deny the existence or nonexistence of records responsive to your request. Such information--unless, of course, it has been officially

Exhibit
A

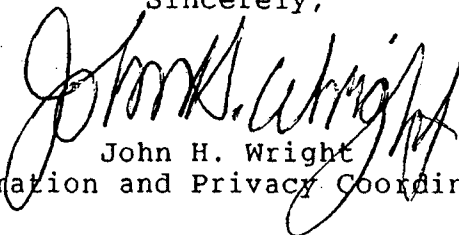
acknowledged--would be classified for reasons of national security under Executive Order 12356. The fact of the existence or nonexistence of such records would also relate directly to information concerning intelligence sources and methods. The Director of Central Intelligence has the responsibility and authority to protect such information from unauthorized disclosure in accordance with Subsection 102(d)(3) of the National Security Act of 1947 and Section 6 of the CIA Act of 1949.

Therefore, your request is denied under FOIA exemptions (b)(1) and (b)(3); an explanation of these exemptions is enclosed. The CIA official responsible for this determination is John H. Wright, Information and Privacy Coordinator. By this action we are neither confirming nor denying the existence or nonexistence of such records.

You may appeal this decision by addressing your appeal to the CIA Information Review Committee, in my care. Should you choose to do this, please explain the basis of your appeal.

We regret that we are unable to assist you further.

Sincerely,

A handwritten signature in dark ink, appearing to read "John H. Wright", is written over the typed name and title.

John H. Wright
Information and Privacy Coordinator

Enclosure

FOIA Policy, *continued from previous page*

Finally, we would like to raise an issue that we did not discuss at the meeting. It has come to our attention that the agency may routinely deny free-lance journalists fee waivers as representatives of the news media, and that it is very difficult for such journalists to learn and meet the standards for establishing news media status. The statute clearly intended to, and the regulations specifically do include free-lance journalists as representatives of the news media. Just because a requester does not work for an established news media organization should not prevent him or her from obtaining a fee waiver. On the contrary, we believe that once the requester establishes a publishing history, he or she should be presumptively given a waiver, unless the agency can affirmatively demonstrate that the requester still does not meet

the news media criteria. Many other agencies already operate under this standard. We encourage you to review the standards and practices of the OIP in order to ensure that all free-lance journalists are given news media fee waivers in accordance with the law.

Thank you for your attention to these matters. We appreciate your willingness to meet with us and to consider our views on these important issues. We look forward to your response to our concerns in this letter.

Sincerely,
Morton H. Halperin

CIA RESPONSE

22 March 1991

I have been asked to respond to your letter of 19 July 1990 in which you raised certain questions and concerns about CIA's interpretation of the CIA Information Act and CIA's compliance with the Freedom of Information Act (FOIA). We had previously met to discuss your concerns and, after reaching what I believe was a general agreement about CIA's obligations under these Acts, George Clark, who is no longer with this office, agreed to provide you with a written response.

Your first concern was about reports you have received that some Agency personnel who administer the FOIA may interpret the CIA Information Act as obligating the Agency to search and review only "finished" intelligence reports prepared for a CIA "client," such as the State Department or the White House. Allegedly, under this interpretation, everything prepared for "in-house" CIA use would be considered as "operational" and thus not subject to a FOIA search and review.

As George stated at our meeting, the Agency does not interpret the CIA Information Act in the manner reported to you. That Act exempts from the FOIA's search, review, disclosure, and publication requirements only those CIA files designated by the Director of Central Intelligence as operational files. As you know, the Act limits the designation of operational files to certain files of the Directorate of Operations, the Directorate of Science and Technology, and the Office of Security. In general terms, files are eligible for exemption if they document the conduct of intelligence activities. Files that are the sole repository of disseminated intelligence are not operational files. Of course, records from exempted operational files are frequently disseminated to and referenced in files that have not been exempted. If such records are returned to and retained solely in exempted operational files, they nevertheless are subject

to search and review. In addition, files that are not exempted are subject to search and review, even if they contain information derived or disseminated from exempted operational files. I have been assured that Agency personnel responsible for implementing the FOIA and the CIA Information Act understand and follow these requirements.

Your second concern was about CIA's response to requests that are identical or substantially similar to previous requests for the same material. CIA attempts to process FOIA requests in the most efficient and least expensive manner in accordance with its regulations, which authorize consultation "with the requester, as may be appropriate, in order to accomplish such arrangements and agreements with the requester as may be acceptable to the requester concerning the Agency's efforts and ability to act on his request expeditiously." 32 C.F.R. 1900.47(b).

One of the most expeditious ways for CIA to act on a request that covers all or a substantial part of a previous request is to consult with the requester, before accepting the request for processing, to determine whether any records disclosed to a previous requester would satisfy the request. Previously disclosed records are held in CIA's Officially Released Information System (ORIS). Our experience has shown that nearly all of the requesters who are offered ORIS material accept these releases in satisfaction of their requests. These requesters benefit because an ORIS release is faster than a completely new search and review. CIA benefits because processing time is saved that can be devoted to the FOIA backlog.

You have suggested that CIA should do more to inform a requester about the substantive scope of the proffered ORIS material and about the procedural nature of the consultation process. It is my understanding, however, that CIA file systems do not always permit the Agency to provide all the information you have suggested. Where it is responsible and feasible to do so, CIA is prepared to inform a requester how long ago the prior request was made and whether there is a reasonable likelihood that a new

(continued on next page)

Exhibit
B

CIA Response. *continued from previous page*

search and review would result in the release of any additional information. Such a response would help to enable a requester decide whether to ask CIA to conduct a new search. As a practical matter, each response to a requester will depend upon the facts of the particular request, and CIA's reviewers may conclude that a response that provides material from the ORIS database requires no further elaboration. However, the Agency's Information and Privacy Coordinator is sensitive to the concerns you raised and, although it is doubtful that standard language would be appropriate in all cases, the Coordinator has agreed to further consider the matter of what to tell requesters.

Nevertheless, you should be aware that, if upon review of the request and ORIS material CIA concludes that a new search would be appropriate, or if the requester so desires, CIA conducts new searches and attempts to relocate any redacted documents to determine whether the previously withheld portions of these documents, which may have been reviewed many years ago, can now be released. Moreover, CIA conducts these new searches even if the prior searches and reviews were recently completed, the request is the same as or is fully encompassed by the prior requests, no new documents are expected to be found, and no information withheld from previously disclosed documents is likely to be released. Of course, if fees are assessable, the requester will have to pay for any new searches conducted.

If a new search is conducted, it will be processed along with all the other pending requests on a "first-in, first-out" basis as of the time it is accepted. The time lost to a requester varies depending upon how long the negotiations over the ORIS material take, but the Agency's experience has been that, in most cases, it is a relatively short period.

Your third concern was that CIA clarify its response to requests for personal information under both the FOIA and

the Privacy Act. After considerable review, we have concluded that, when persons eligible for Privacy Act processing request information about themselves under the FOIA as well as the Privacy Act, it is appropriate to process their requests under both Acts as requested. This is our current policy.

Finally, you expressed concern that CIA "may routinely deny free-lance journalists fee waivers as representatives of the news media." First, I would point out that the FOIA distinguishes between fee waivers and reduced fees for representatives of the news media, and I assume you are referring to the latter. Second, the Agency does not routinely deny freelance journalists news media status, but accords such status if there is a reasonable basis for doing so. However, under the FOIA, use of the information disclosed is a relevant factor in according news media status and, therefore, a member of the news media might not qualify for reduced fees in a particular case. I understand that this does not happen very often, and the Agency gives due consideration to any reasonable basis a freelance journalist may put forward that he or she is entitled to news media status.

We appreciate your interest and concern about CIA's administration of the FOIA, and think the dialogue between us has been fruitful. This kind of discussion improves our understanding of problems, either real or perceived, that arise in the course of our compliance with the FOIA and, I hope demonstrates CIA's commitment to comply with both the letter and the spirit of the law.

Please let me know if I can be of further assistance.

Yours truly,
W. George Jameson
Associate General Counsel

Security Clearances, *continued from page 6*

these employees were eliminated such as those having to do with political associations.

SF-85 was revised to eliminate any questions concerning political associations and arrest or mental health history. The question concerning arrest in the remaining forms was specifically limited to preclude use in criminal proceedings, and the question concerning Communist party membership was eliminated from the SF-86.

Despite these improvements, problems remain. The broad inquiry concerning drug use remains intact as does the demand for personal mental health information on the SF-85P and SF-86. In addition new political advocacy questions on the SF-86 aimed at associations with organizations that may be involved in unlawful conduct remain untested. Those ques-

tions, apparently intended to get at knowing and intentional participation or advocacy in an organization whose aim is to overthrow the United States, remain vague and overbroad. Finally, the new release provision, while significantly narrower than before, continues to pose risk to personal privacy.

In addition to Congressional hearings, a number of federal unions filed lawsuits seeking to enjoin further use of the old forms. While most of the cases remain unresolved, one court did enjoin the use of the old SF-86, at least as applied to low level employees of the Railroad Retirement Board, because it violated their First Amendment and privacy rights. *American Federation of Government Employees v. U.S. R.R. Retirement Board*, 742 F. Supp. 450 (N.D. Ill. 1990) (See *First Principles*, Vol. 15, No. 3 (Aug. 1990)). No cases have yet been filed under the new forms. ■

Central Intelligence Agency



Washington, D.C. 20505

890517ACD00C

10 MAY 1994

Mr. Kenneth Mokoena
The National Security Archive
Suite 500
1755 Massachusetts Avenue, N.W.
Washington, D.C. 20036

RECEIVED MAY 16 1994

Reference: F91-1004

Dear Mr. Mokoena:

In the course of processing your 7 November 1989 Freedom of Information Act (FOIA) request for records pertaining to collaboration between Israel and South Africa on military technology and nuclear research from 1975 to 1989, the Arms Control and Disarmament Agency located two CIA documents and six Foreign Broadcast Information Service (FBIS) documents and referred them to us for our review and direct response to you.

We have reviewed the documents identified below:

Documents:

1. News release, 20 March 1980
2. News release, 28 February 1981
3. NES-90-229, 28 November 1990
4. AFR-89-219, 15 November 1989
5. NES-89-222, 20 November 1989
6. TAC-90-024, 15 August 1990
7. Memorandum, 6 December 1989 with attachment
8. Report, 8 July 1989

We have determined that the FBIS documents numbered 1-6 can be released in their entirety. Copies of the documents are enclosed.

We have further determined that the CIA documents numbered 7-8 must be withheld in their entirety on the basis of FOIA exemptions (b)(1) and (b)(3). An explanation of exemptions is also enclosed.

Central Intelligence Agency



Washington, D.C. 20505

13 JUL 1994

94050961A041

Ms. Jane Gefter
The National Security Archive
1755 Massachusetts Avenue, N.W.
Suite 500
Washington, D.C. 20036

RECEIVED JUL 15 1994

Reference: F94-1225

Dear Ms. Gefter:

This is to acknowledge receipt of your 14 June 1994 Freedom of Information Act (FOIA) request for copies of "all items concerning the People's Republic of China in the National Intelligence Daily from June 1-30, 1989."

Your request as stated is unsearchable in our records systems. The FOIA does not require us to perform research or create records for a requester. Neither are we required to study a body of material to see if any of it is related to a specific event, activity, or incident. To study a body of material to see if any of it relates to the specifics of your request would constitute research which is neither required nor authorized under the FOIA.

We regret we are unable to assist you further.

Sincerely,

John H. Wright
Information and Privacy Coordinator

Exhibit
D

Central Intelligence Agency



Washington, D.C. 20505

940641C/A052

09 AUG 1994

RECEIVED AUG 11 1994

Ms. Joyce Battle
The National Security Archive
1755 Massachusetts Avenue, N.W., Suite 500
Washington, D.C. 20036

Reference: F94-1461

Dear Ms. Battle:

This is to acknowledge receipt of your 21 July 1994 Freedom of Information Act (FOIA) request referenced above.

Specifically, you are requesting copies of the following:

"1. An October 10, 1992 public statement issued by the CIA discussing testimony before the Senate Select Committee on Intelligence in regard to the Banca Nazionale del Lavoro (BNL) affair.

2. A public statement issued on September 18, 1992 regarding CIA information on the Banca Nazionale del Lavoro (BNL) affair."

Your request as stated is unsearchable in our records systems. The FOIA provides for public access to reasonably described records. This means that a document must be described sufficiently to enable a professional employee familiar with the subject to locate the document without an unreasonable amount of effort. This, with few exceptions, means that the documents must be locatable through the indexing to our various records systems. The FOIA does not require us to perform research or create records for a requester. Neither are we required to study a body of material to see if any of it is related to a specific event, activity, or incident.

We regret we are unable to assist you with your request. If you can describe the reports in which you are interested in greater detail, we shall be happy to search for them on your behalf.

Sincerely,

A handwritten signature in dark ink, appearing to read "John H. Wright".

John H. Wright
Information and Privacy Coordinator

Central Intelligence Agency



Washington, D.C. 20505

740542C1A042

12 JUL 1994

Ms. Joyce Battle
The National Security Archive
1755 Massachusetts Avenue, N.W.
Suite 500
Washington, D.C. 20036

RECEIVED JUL 14 1994

Reference: F94-1278

Dear Ms. Battle:

This is to acknowledge receipt of your 1 July 1994 Freedom of Information Act (FOIA) request for all records relating to "the export of nuclear equipment, technology, facilities, technical assistance, training, or information from China to Iraq from 1980 to 1991."

Your request as stated is unsearchable in our records systems. The FOIA provides for public access to reasonably described records. This means that a document must be described sufficiently to enable a professional employee familiar with the subject to locate the document without an unreasonable amount of effort. This, with few exceptions, means that the documents must be locatable through the indexing to our various records systems. The FOIA does not require us to perform research or create records for a requester. Neither are we required to study a body of material to see if any of it is related to a specific event, activity, or incident. To study a body of material to see if any of it relates to the specifics of your request would constitute research which is neither required nor authorized under the FOIA.

We regret that we are unable to assist you.

Sincerely,

A handwritten signature in dark ink, appearing to read "John H. Wright", written over a circular stamp.

John H. Wright
Information and Privacy Coordinator

Central Intelligence Agency



Washington, D.C. 20505

930998C/A095

RECEIVED MAR 02 1994

Ms. Marjorie Robertson
The National Security Archive
1755 Massachusetts Avenue, N.W., Suite 500
Washington, D.C. 20036

Reference: F93-2185

Dear Ms. Robertson:

This is to acknowledge receipt of your 28 October 1993
Freedom of Information Act (FOIA) request.

Specifically, you are requesting the following information:

- "1. Documents of 1949 and 1950 relating to the establishment of the Free Europe Committee (later changed to the National Committee for a Free Europe) and the founding of Radio Free Europe.
2. CIA reports in November and December 1956 on the responsibility of Radio Free Europe in inciting and prolonging the Hungarian uprising.
3. Memoranda by CIA staff on how to deal with subsequent revelations in February and March 1967 that the CIA financed Radio Free Europe."
4. You also request "[a]ll studies done specifically concerned with Radio Free Europe."

With respect to items 1-3 of your request, we must advise you that these portions of your request are unsearchable in our records systems. The FOIA provides for public access to reasonably described records. This means that a document must be described sufficiently to enable a professional employee familiar with the subject to locate the document without an unreasonable amount of effort. This, with few exceptions, means that the documents must be locatable through the indexing to our various records systems. The FOIA does not require us to perform research or create records for a requester. Neither are we required to study a body of material to see if any of it is related to a specific event, activity, or incident.

Central Intelligence Agency



Washington, D.C. 20505

940315C1A021

20 MAY 1994

Ms. Kate Doyle
The National Security Archive
1755 Massachusetts Avenue, N.W.
Suite 500
Washington, D.C. 20036

RECEIVED JUL 11 1994

Reference: F94-0746

Dear Ms. Doyle:

This is to acknowledge receipt of your 8 April 1994
Freedom of Information Act (FOIA) request referenced above.

Specifically, you are requesting all records relating to
the "June 30, 1984 abduction of Bolivian President Hernan Siles
Zauzo and the associated coup attempt." You ask that this
request also include "information on the following:

1. The role of the Bolivian counternarcotics police
UMOPAR in the abduction and coup attempt.
2. The roles of UMOPAR officers Col. Rolando Saravia,
Col. German Linares, Carlos Barriga and Julio Diaz-Vargas.
3. The role of U.S. Ambassador Edin Corr in obtaining
the release of President Siles Zauzo.
4. The discussions and decisions leading up to the
July 17, 1984 announcement by the State Department that
they would continue to work with UMOPAR despite their
involvement in the abduction of President Siles Zauzo."

We can search that portion of your request for records
concerning the "June 30, 1984 abduction of Bolivian President
Hernan Siles Zauzo and the associated coup attempt." However,
any material located as a result of our search, if any exists,
would also include those portions of your request relating to
items 1-3 above. Furthermore, since the FOIA does not require
us to perform research or create records for a requester, nor
does it require us to study a body of material to see if any of
it is related to a specific event, activity, incident, or
individual, it will be your responsibility to review whatever
releasable documents are located, if any exist, to see if they
pertain to the specifics of items 1-3.

***** STAFF MEMORANDUM *****

TO: Members of the Advisory Committee on Human Radiation Experiments

FROM: Advisory Committee Staff

DATE: June 27, 1994

RE: Methodological Review of Agency Data Collection Efforts:
Initial Report on the Central Intelligence Agency Document Search

This initial report provides: (1) background on the Central Intelligence Agency, its involvement with human experimentation, and its records; (2) a description of the CIA's records search; and (3) staff observations and recommendations to the Committee for future action.

EXECUTIVE SUMMARY**1. CIA History and Records**

The CIA was created in 1947 to serve as the government's principal intelligence collection and analytical agency, as well as to engage in covert actions to influence events in foreign countries through propaganda, economic, political, and paramilitary means. In the 1950s and 60s, the CIA engaged in an extensive program of human experimentation, using drugs, psychological, and other means, in search of techniques to control human behavior for counterintelligence and covert action purposes. The possibility that CIA itself engaged in human *radiation* experiments emanates from references in a 1963 CIA Inspector General's (IG) report on Project MKULTRA, which was a program "concerned with research and development of chemical, biological, and radiological materials capable of employment in clandestine operations to control human behavior."

MKULTRA was the subject of extensive internal, congressional, and outside investigations in the 1970s. In 1973, the CIA purposefully destroyed most of the MKULTRA files concerning its research and testing on human behavior. In 1977, the agency uncovered additional MKULTRA files in the budget and fiscal records that were not indexed under the name MKULTRA. These documents detailed over 150 subprojects that the CIA funded in this area, but no evidence was uncovered at that time concerning the use of radiation.

CIA records are maintained at CIA Headquarters and the CIA record center. Most older records, before 1980, are in paper form with electronic databases of the file-folder titles. The MKULTRA files are held by the CIA General Counsel, although most have been released to the public.

Although the CIA has offices around the world and elsewhere in the United States, its records are maintained in and controlled by CIA Headquarters in Langley, Virginia and at the CIA records center (which is independent from the National Archives and the federal records centers). The main database that the CIA has been searching is the Agency Records and Information System (ARCINS), which contains information on the holdings of most of the major components in the Agency Archives and Records Center. The data base contains subject listings down to the folder level.

The following is a description of the record system in each of the four directorates and the DCI's offices and the CIA's report of its search process.

(1) **Director of Central Intelligence Area.** The files under the control of the DCI are in paper from years 1947-80, and are indexed in the ARCINS. The agency conducted a key word search of these files for topics dealing with human radiation experiments. Many of the MKULTRA files, which are held by the General Counsel, were searched by hand; the agency also contacted and interviewed former staff who were involved in or had knowledge of MKULTRA projects, including Richard Helms and Sidney Gottlieb, the Director of TSD who ran the MKULTRA programs. It does not appear that the agency contacted persons on the IG staff who prepared the 1963 IG report on MKULTRA.

(2) **Directorate of Science and Technology.** The DS&T used the ARCINS and focused its search primarily on two of its offices: the Office of Technical Service (formerly the TSD that conducted MKULTRA) and the Office of Research and Development. The directorate pulled approximately 30 cubic feet of documents and is still engaged in a hand search of this material. The agency brought in two retired persons ("annuitants") with knowledge of these activities to help with search.

(3) **Directorate of Intelligence.** The DI has three central data bases which are computerized index systems of raw and finished intelligence reports (depending on the time frame), as well as two hard copy indices. The former are queried by subject categories, area codes, and/or key words. The documents themselves (not merely "folder titles") are indexed. The initial search was for any records relating to ionizing radiation experiments on humans. In those instances where there is no keyword capability, broad subject codes were linked with the United States: i.e., if a document referred solely to foreign activities not including the United States, it would not have surfaced. (Soviet atomic bomb developments were not the subject of the initial request.) The DI also searched for records archived by the Office of Scientific Intelligence using ARCINS for topics dealing with human radiation experiments. Approximately 18,600 pages were reviewed by hand, and no responsive documents were located. OSI files are still under review, and the Directorate is conducting additional searches based on new information supplied by the Committee.

(4) **Directorate of Administration.** The DA's files are indexed primarily by name. However, it also searched the Office of Security, because of its early involvement in MKULTRA.

Central Intelligence Agency



Washington, D.C. 20505

940435 CIA 040

01 JUL 1994

Ms. Joyce Battle
The National Security Archive
1755 Massachusetts Avenue, N.W., Suite 500
Washington, D.C. 20036

RECEIVED JUL 11 1994

Reference: F94-1013

Dear Ms. Battle:

This is to acknowledge receipt of your 12 May 1994 Freedom of Information Act (FOIA) request referenced above.

Specifically, you are requesting copies of "[t]he following intelligence reports on Banca Nazionale del Lavoro (BNL) dated:

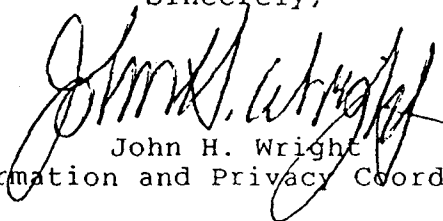
1. September 15, 1989
2. October 5, 1989
3. October 6, 1989
4. October 20, 1989"

Your request as stated is unsearchable in our records systems. The FOIA provides for public access to reasonably described records. This means that a document must be described sufficiently to enable a professional employee familiar with the subject to locate the document without an unreasonable amount of effort. This, with few exceptions, means that the documents must be locatable through the indexing to our various records systems. The FOIA does not require us to perform research or create records for a requester. Neither are we required to study a body of material to see if any of it is related to a specific event, activity, or incident. To study a body of material to see if any of it relates to the specifics of your request would constitute research which is neither required nor authorized under the FOIA.

Exhibit
F

We regret we are unable to assist you with your request. If you could provide a specific subject or further describe the reports in which you are interested, we shall be happy to conduct records searches on your behalf.

Sincerely,

A handwritten signature in dark ink, appearing to read "John H. Wright", is written over the typed name and title.

John H. Wright
Information and Privacy Coordinator

The National Security Archive

Documenting U.S. Foreign Policy

A Project of the Fund for Peace

August 9, 1994

John H. Wright
Information and Privacy Coordinator
Central Intelligence Agency
Washington, D.C. 20505

RE: F94-1013
Archive FOIA No. 94Q435CIA040

Dear Mr. Wright:

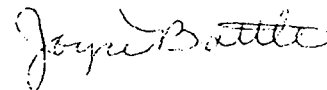
I am writing in response to your letter of July 11, 1994, in which you indicated that a request for four intelligence reports on the Banca Nazionale del Lavoro (BNL) was unsearchable in your records systems. I question your assertion that the information in my request is insufficient to locate documents in your files. The subject and dates provided should be sufficient for a keyword and date search of your indexing system.

The documents requested were the subject of considerable Congressional, media and public attention when questions arose about the completeness of the CIA's response to requests for information from judicial authorities investigating the BNL affair. The requested intelligence reports were identified and provided to the Senate Select Committee on Intelligence for its review in response to a request for CIA information pertaining to BNL.

I have enclosed a September 1990 letter from the Senate Select Committee on Intelligence referring to the documents. With this citation, I believe that sufficient information has been provided to locate these materials for review.

I look forward to your response. If you have any questions or believe a discussion of this matter would be beneficial, please do not hesitate to contact me.

Sincerely,



Joyce Battle

Enclosure

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United States Senate

SELECT COMMITTEE ON INTELLIGENCE
 WASHINGTON, DC 20510-4678

P. 5/16

92-05480

GEORGE J. MITCHELL, MAINE, DE GARCIA
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GEORGE J. TERRY, STAFF DIRECTOR
 JOHN R. MOSEMAN, MINORITY STAFF DIRECTOR
 KATHLEEN P. MICHAEL, CHIEF CLERK

September 30, 1992


SSCI# 92-4768

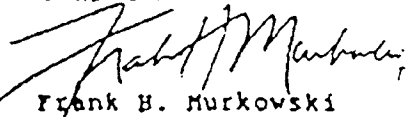
The Honorable Robert M. Gates
 Director of Central Intelligence
 Central Intelligence Agency
 Washington, D.C. 20505

Dear Bob:

The Committee requests further information be provided with respect to the background and preparation of the CIA letter of September 17, 1992, to the Department of Justice regarding the federal investigation of activities at the Banca Nazionale de Lavoro Atlanta branch. In particular, we request responses to the questions listed in the attachment to this letter as soon as possible.

Sincerely,


 David L. Boren
 Chairman


 Frank H. Murkowski
 Vice Chairman

Attachment

4000010

ATTACHMENT

With respect to the CIA letter of September 17, 1992, to the Department of Justice relating to the federal investigation of activities at the Banca Nazionale del Lavoro Atlanta branch, please describe in detail:

1. All of the contacts between the Department of Justice (including the Federal Bureau of Investigation) and the CIA which led to the transmittal of this letter. Such description should include:

-- When did each contact occur?

-- What offices were involved in each contact? Who were the individuals acting for DoJ? Who were the individuals acting for CIA?

-- Were the communications oral, in writing, or both?

-- What was the substance of each contact, including each request for information and each response thereto?

-- In the course of any of such contact, did DoJ ever share with CIA officials the Atlanta prosecution theory or strategy? If so, please describe the circumstances.

-- What guidance, if any, did DoJ officials give CIA with respect to the form or content of CIA responses? Was CIA ever advised to conform the contents of its response to fit the prosecution theory of the case? If so, please explain the circumstances.

-- Was CIA apprised in the course of any contact that DoJ planned to enter its response into evidence in the Drogoul case and/or release it to the public? If so, when did this occur?

2. The process within CIA which led to the letter of September 17, 1992, to include:

-- Which office at CIA was responsible for the drafting, reviewing, and/or final approval of the CIA response of September 17, 1992? Did the General Counsel review the response? Did the DCI or DDCI?

-- Did any CIA official take the position prior to its release that any portion of the September 17 letter, or any draft of that letter, was inaccurate or misleading? If so, how was this objection dealt with?

-- Describe all materials that were consulted in preparing the letter. Who was responsible for searching for and assembling these materials and what process was

used to do so?

-- Specifically, did the author(s) of the September 17 letter prepare the answers with knowledge of and/or access to the September 15, October 5, October 6, and October 20, 1989, clandestine reports concerning BNL that SSCI staff discussed at the September 28, 1992, meeting?

-- Precisely to what was CIA referring in the September 17 letter's reference in answer number 8 to "publicly available information, acquired in the December, 1989 - January, 1990 time-frame, that BNL-Rome was aware of the illegal activities engaged in by BNL-Atlanta"?

-- Why did CIA believe the December 1989-January 1990 public information met the test for "any information" regarding its awareness of "illegal activities" while the October 1989 clandestine reports did not? Does CIA still adhere to this view?

-- Did CIA consent to the September 17, 1992 letter being released to the media and the public? Which office approved this?

3. Communications with the DOJ and Judge Shoob concerning CIA information, to include:

-- When did CIA transmit to DOJ raw intelligence and any operational files or information relating to any knowledge by BNL-Rome and/or entities of the United States Government of BNL-Atlanta's activities? When these documents were transmitted, did CIA include summaries or explanatory information? Were summaries transmitted prior to or after transmission of the raw intelligence? When, if ever, was DOJ provided with the September 15, October 5, October 6, and October 20, 1989, clandestine reports concerning BNL that SSCI staff discussed at the September 28, 1992, meeting?

-- By the time that the first BNL-Atlanta indictments were issued in February 1991, had the Intelligence Community provided DOJ with all available Intelligence Community information and documentation on any knowledge by BNL-Rome and/or entities of the United States Government of BNL-Atlanta's activities? If not, please explain what information was not provided and why.

-- When did Judge Shoob receive raw intelligence and any operational files or information relating to any knowledge by BNL-Rome and/or entities of the United States Government of BNL-Atlanta's activities? Has Judge Shoob had constant access to these materials since they came into his possession? When these documents were transmitted to Judge Shoob, did CIA or DOJ include

summaries or explanatory information? Were summaries transmitted to Judge Shoob prior to or after transmission of the raw intelligence? When, if ever, was Judge Shoob provided with the September 15, October 5, October 6, and October 20, 1989, clandestine reports concerning BNL that SSCI staff discussed at the September 28, 1992, meeting?

★

612 Lincoln Avenue #301
St. Paul, Minnesota 55102-2829
612-224-8447

August 22, 1994

Director
Information Management
Central Intelligence Agency
Washington, DC 20505

Dear Sir or Madame:

This letter provides comments in response to the Federal Register Notice dated Monday, August 8, 1994, page 40339.

The thrust of the CIA's information release activities must, by definition, evolve in response to changing world conditions. Therefore, business as usual, is likely to be unacceptable within the context of domestic and international concerns.

Although the CIA's Historical Review Program has expanded substantially since 1992, much of the material released has been mandated by outside executive branch directives. For example, the "over 140,000 pages from the JFK sequestered collection of documents" was ordered reviewed and released by President Clinton. I believe that the "over 1,500 pages of records on Raoul Wallenberg" has also been released in response to requirements external to the CIA. A more proactive approach is suggested, and one that concentrates on the needs of historical researchers.

- 1) THE CIA SHOULD USE A FLOATING 30-YEAR TIMELINE TO RETRIEVE AND REVIEW HISTORICAL MATERIALS FOR RELEASE.

Materials of historical importance need to be made available up through 1964, and more recent materials need to be reviewed when their 30-year anniversaries are reached.

- 2) THE CIA SHOULD GIVE TOP PRIORITY TO THE REVIEW OF OLDER CIA HISTORICAL REPORTS (WHICH CURRENTLY EXIST BUT ARE RESTRICTED OR CLASSIFIED).

CIA Historical Reports and documents generated by CIA internal historians are already in a form suitable for use by historical researchers. These secondary documents will provide the most accurate interpretation of historical events for historians, and the least additional work to be useful.

- 3) THE CIA HISTORICAL REVIEW PROGRAM SHOULD COMPILE AN UNCLASSIFIED BIBLIOGRAPHY OF CIA HISTORIES, INCLUDING ALL

**KNOWN DOCUMENTS, THEIR CURRENT LEVEL OF AVAILABILITY, AND
THE ANTICIPATED DATE OF THEIR NEXT DECLASSIFICATION REVIEW.**

This omnibus historical bibliography will provide a good road map for historical researchers, while potentially reducing the workload for those involved in processing FOIA requests.

- 4) TO ENCOURAGE MAXIMUM UTILIZATION BY HISTORIANS OF ONGOING DECLASSIFICATION MATERIALS, THE CIA SHOULD CONTINUE TO SPONSOR ADDITIONAL SYMPOSIA THROUGH THE CENTER FOR THE STUDY OF INTELLIGENCE.

This will serve to bring these newly accessible materials to a broad range of researchers, and thus preclude misinterpretation by potentially hostile researchers, and also get the "biggest bang for the buck."

- 5) THE CIA SHOULD ESTABLISH A "PUBLIC READING ROOM" IN THE WASHINGTON, DC METROPOLITAN AREA FOR MATERIALS RELEASED UNDER THE HISTORICAL REVIEW PROGRAM. THE READING ROOM SHOULD ALSO INCLUDE MATERIALS OF GENERAL INTEREST WHICH HAVE BEEN RELEASED TO REQUESTERS UNDER THE FREEDOM OF INFORMATION ACT, AND THOSE MATERIALS WHICH THE CIA HAS MADE ACCESSIBLE PREVIOUSLY UNDER OTHER PROGRAMS.

Suggestions for Materials which should be reviewed for release:

I also suggest that the following record sets be reviewed for declassification and availability for several reasons including that they address the topic of non-US development of atomic weapons. Furthermore, they are over 45 years old.

FBIS (FOREIGN BROADCAST INFORMATION SERVICE) REPORTS DATED PRIOR TO DECEMBER 31, 1950.

FOREIGN DOCUMENTS DIVISION (FDD) REPORTS DATED PRIOR TO DECEMBER 31, 1950.

Q INFORMATION REPORTS WRITTEN PRIOR TO DECEMBER 31, 1950.

FDD TRANSLATIONS DATED PRIOR TO DECEMBER 31, 1950.

U REPORTS DATED PRIOR TO DECEMBER 31, 1950.

Comments on CIA Files Designated as Operational

I do not believe that, for the purposes of FOIA request, that all the CIA files presently designated as Operational should continue to be treated as such.

Specifically, the Personality files have contained records on persons surveilled within the borders of the United States for partisan and political reasons rather than counterintelligence reasons. The exemption of Personality file searches have, by themselves, subverted the intent of the FOIA statutes, because the CIA FOIA office routinely refuses to search the Personality files for applicable records.

I feel that while much of the material within the Personality files, may in fact be exempt under FOIA statutes, treating the entire set of files as such is counterproductive, improper and illegal. Therefore, the older Personality files (more than 25 years old) should be considered outside the scope of operational files for the purpose of initial FOIA searches.

Thank you for requesting and considering my comments.

Sincerely,


Michael J. Ravnitzky

**NATIONAL COORDINATING COMMITTEE
FOR THE PROMOTION OF HISTORY**



**Administrative Offices: 400 A STREET SE
WASHINGTON, DC 20003/(202) 544-2422**

Dr. Page Putnam Miller
Director

Members

American Historical Association
Organization of American Historians
Society of American Archivists
Western History Association
Phi Alpha Theta
Southern Historical Association
Society for Military History
Society for Historians of
American Foreign Relations
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ABC-CLIO
Coordinating Committee on Women
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Conf. Group on Women's History
History of Science Society
Society for the History of Technology
American Political Science Association
Berkshire Conf. of Women Historians
Council on Peace Research in History
Immigration History Society
American Association for
State and Local History
Conference Group for
Central European History
Women Historians of the Midwest
Polish American Historical Association
Agricultural History Society
American Library Association—
Library History Round Table
Federation of State Humanities Councils
Society for History in the
Federal Government
National Council on Public History
National Archives Assembly
American Association for the
History of Medicine
Association for Documentary Editing
Midwest Archives Conference
National Association of Government
Archives and Records Administrators
Federation of Genealogical Societies
Oral History Association
Mid-Atlantic Regional Archives Conf.
American Society for Legal History
American Studies Association
Council on America's Military Past
Economic History Association
History Associates, Inc.
Institute for Historical Study
(San Francisco)
New England Archivists
Society of Georgia Archivists
Society for Industrial Archeology
Southern Association for Women
Historians
American Council of Learned Societies
Community College Humanities Association
National Genealogical Society
Urban History Association
Western Association of Women Historians

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Kansas	Pennsylvania
Kentucky	Texas
Maryland	Utah
Michigan	Vermont
Minnesota	Wisconsin
Mississippi	

September 7, 1994

Mr. Ed Cohen
Director, Information Management
Central Intelligence Agency
Washington, DC 20505

Dear Mr. Cohen,

I received the attached letter from Athan Theoharis, a professor of history at Marquette University. He heard about the request for comments in the Federal Register but did not see the announcement. He has thus asked me to forward his comments to you.

Sincerely,

Page Putnam Miller

MU Marquette University

Charles L. Coughlin Hall
Milwaukee, WI 53233
(414) 288-7217, 288-7385

August 26, 1994


Page Putnam Miller, Director
National Coordinating Committee

Dear Page:

A colleague advised me of the September 7, 1994, comment^{Lead line} re the CIA request for comments on the historical value of CIA operational files and other CIA records. Since this colleague did not report to whom I should send this comment, I am mailing it to you and request that you send it to the appropriate office or official.

Clearly it is difficult to offer a firm assessment on the historical value of CIA records, and particularly the Agency's operational files. That difficulty stems not from the questionable value of these records but the fact that CIA records were not accessible to historical researchers until passage of key amendments to the Freedom of Information Act in 1974. Even then, released CIA records were heavily redacted and then, in 1983, CIA operational files were totally exempted from release under the FOIA. In arguing for the passage of the 1983 amendment, CIA officials emphasized the sensitivity of these records and how their public release would adversely affect the Agency's liaison relationship with other foreign intelligence agencies and the Agency's ability to recruit sources. In itself, this is an argument for the importance of these records for historical research (whenever released) and against the destruction of these records. Operational files are a record of the Agency's operations and procedures--and given the Agency's importance to the formulation and execution of U.S. foreign policy, these records provide an essential record to the student of U.S. foreign policy. As well, students of bureaucracy will find these records of inestimable value, providing insights into the Agency's methods, procedures, priorities, and as well its successes and failures. Last the very secrecy of the Agency's operations make CIA records of particular value providing a record of the Agency's relationship with the White House, conceptions of Congress's role, conceptions of public and press opinion. The very fact that the CIA operated in secrecy means that CIA records offer a far more comprehensive record of executive policy and decisions than those of other executive agencies and the White House, whose personnel might have otherwise hesitated to create written records of sensitive decisions. While retention of the resulting massive records might create housekeeping problems, these are records of great historical research value and should be preserved.

Sincerely,


Nathan Theoharis
Professor of History

NATIONAL COORDINATING COMMITTEE
FOR THE PROMOTION OF HISTORY



Administrative Offices: 400 A STREET SE
WASHINGTON, DC 20003/(202) 544-2422

Dr. Page Putnam Miller
Director

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Berksshire Conf. of Women Historians
Council on Peace Research in History
Immigration History Society
American Association for
State and Local History
Conference Group for
Central European History
Women Historians of the Midwest
Polish American Historical Association
Agricultural History Society
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Library History Round Table
Federation of State Humanities Councils
Society for History in the
Federal Government
National Council on Public History
National Archives Assembly
American Association for the
History of Medicine
Association for Documentary Editing
Midwest Archives Conference
National Association of Government
Archives and Records Administrators
Federation of Genealogical Societies
Oral History Association
Mid-Atlantic Regional Archives Conf.
American Society for Legal History
American Studies Association
Council on America's Military Past
Economic History Association
History Associates, Inc.
Institute for Historical Study
(San Francisco)
New England Archivists
Society of Georgia Archivists
Society for Industrial Archeology
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Historians
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Mississippi	

NCC Briefing Sheet on Historical Value of Operational Files of the CIA
August 24, 1994

Background: On August 8 the Federal Register carried a request for comments from the public regarding the historical value of the subject matter of the Central Intelligence Agency's (CIA) operational files. Since 1984 these files have been exempt from Freedom of Information Act (FOIA) requests. The CIA Information Act of 1984 exempted from FOIA searches three categories of operation files -- the files of the directorate of Operations, the files of the Directorate of Science and Technology, and the files of the Office of Security. Within these categories some of the files that would be of most interest to historians are the Policy and Management files of the Directorate of Operations, described in the Federal Register announcement as files containing information concerning the management of individual projects and decisions made for the conduct of operational activities. In hearings in 1983 when this legislation was under consideration, historians testified in the House and Senate in opposition to policies that closed off large bodies of records without any provisions for eventual access. In subsequent amendments, spearheaded by Senator Patrick Leahy, some concessions were made to ensure that the legislation not undercut the public's access through the FOIA to information used in setting United States foreign policy. One of the amendments adopted requires that not less than once every 10 years the Director of Central Intelligence review those categories of records exempt from FOIA requests. With the end of the 10 year period occurring in October, the CIA is soliciting comments to assist with this review.

Key Issues:

1. Through its Openness Initiative the CIA has in the last few years made some select information available to the public. But the long list in the Federal Register under "Declassification and Release of CIA Information of Historical Value" includes relatively few documents. At the March, 1994 CIA Conference on the Origin and Development of the CIA in the Administration of Harry S. Truman, Dr. Anna Nelson of American University in a session titled "Research, Records, and Declassification Today" made clear that "the efforts of CIA public relations officials notwithstanding, the Agency has released very few of its records." The CIA collection in the National Archives consists mainly of intelligence estimates, articles from Studies in Intelligence, some documents used in the preparation of official CIA histories, records related to the JFK assassination that were required by law to be deposited at the National Archives, and some selected documents dealing with specific issues.

2. Scholars require comprehensive access to records. Preselected groups of documents pulled from the files are not a satisfactory alternative. The historical

profession has for a long time urged that older records of historical significance be transferred to the National Archives and made available to researchers. While historians value the FOIA, historical methodology is best served when researchers have access to the whole body of records and not isolated documents. As the National Archives stated in a 1980 General Accounting Office report, "To fully explore a research topic, a researcher requires comprehensive access to the records, i.e., to examine the records with minimal constraints." The recent CIA declassification efforts have resulted in two archival boxes of material related to the Cuban Missile Crisis being placed in the National Archives. So few documents raise more questions than provide answers for historians.

3. The principle that the sensitivity of a record declines with age should be a part of all access policies. A most troubling aspect of the current designation of files to be exempt from the Freedom of Information Act is that there is no consideration of the age of documents. Thus a 1950 document is as inaccessible as one from 1990, if it falls within one of the exempted categories.

4. Until the mid-twentieth century, the State Department was the primary agency involved in the conduct of foreign affairs. Today, the National Security Council, as well as the CIA, have pivotal roles. The CIA acknowledged this role in sponsoring a conference in October, 1993 on "Teaching Intelligence." At this conference the CIA provided participants with a collection of syllabi of Intelligence-Related Courses. One such syllabus begins with the statement: "The flow of information to policy makers, particularly on critical areas of foreign affairs, has been greatly influence by what intelligence agencies generate and by their posture toward foreign policy issues. This course will examine the role of strategic intelligence and intelligence agencies as a tool of United States foreign policy." Although the CIA may seek to encourage the study of intelligence, this effort appears only half hearted without providing access to the historical records.

5. If the CIA is to defend its mission in this rapidly changing world, there needs to be more information available that will allow a meaningful debate on the role of intelligence gathering and analysis for the conduct of foreign policy. Many inside and outside of government feel that secrecy has not only handicapped CIA's ability to make a case for the value of intelligence assessments but has also handicapped the quality of analytical studies by insulating those who prepare intelligence assessments from dialog with specialists outside the agency.

6. Unless the CIA makes available more of its historic documents, the Foreign Relations of the United States (FRUS), the State Department's documentary series of 30 year old documents that provide an authentic and comprehensive presentation of American foreign relations will be distorted. The State Department Advisory Committee on Historical Diplomatic Documentation, which is mandated by law to have oversight over both the publication of FRUS volumes and the State Department declassification program, noted in its August annual report that the Committee is preparing to contest declassification refusals by the Department of State and the CIA. The Committee has unanimously agreed that there would be serious distortions to the record of American foreign policy with at least two volumes on the Kennedy presidency, if these documents over thirty years old are not included.

Recommendation: Historians urge that there be a full scale revision of the operational categories defined in the CIA Information Act of 1984 to ensure that older records of historical value are accessible to scholars and to the public.

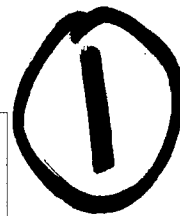


Comments from the Public Concerning
Decennial Review of CIA Operational File Exemptions

APPROVED FOR RELEASE
DATE: 18 Sep-2012

Received as of 25 January 2005

	Writer	Argument
1.	Jonathan D. Clemente, MD (author of manuscript on "medical intelligence")	Requests special consideration of operational files pertaining to OMS and medical intelligence
2.	Andrew M. Nacin	Requests a specific 1967 document relating to the USS Liberty
3	Paul Wolf (researcher/writer on intel topics)	Concerned that decennial review process will result in file destruction...argues that DO records are historically significant and that disclosure is essential for a well informed public.
4	R. Bruce Craig Director, National Coalition for History	Suggests declassification of ops files older than 30 years...cites examples of major releases of ops records that did not harm national security...asserts ops file series encompass releasable materials...reminds us that CIA has not released promised convert ops materials...alleges CIA has reclassified previously released material..
5	Michael J. Churgin American Society for Legal History; Univ. of Texas	Urges maximum disclosure of ops records because of their historical significance
6	John W. Carlin Archivist of the U.S. NARA	Believes cleared NARA staff to examine records to help determine whether they should remain exempt...wants NARA to accession full-text version of CREST records...wants to ensure that 50-year old records are sent for accessioning, not destroyed.
7	Thomas Blanton and Meredith Fuchs National Security Archive	Presents a nine-page argument asking CIA to narrow its categories of exempt records because scholars and public need to know intel history and learn from experience.
8	James H. Lesar, Esq.	Everything CIA has ever done stinks and the public needs to know the details of its corruption.
9	Meredith Fuchs National Security Archive	Asks CIA to make the decennial review docket (notice and comments) publicly available--on CIA's website or NSArchive's.



24 December 2004

Edmund Cohen
Director of Information Management Services
Central Intelligence Agency
Washington, D.C. 20505

Dear Mr. Cohen:

This letter is in response to the request for solicitation of comments on the historical value of CIA files, which was published in the Federal Register, Volume 69, No. 244, 21 December 2004.

I would like to suggest that during the second decennial review, the CIA consider those records from the Directorate of Operations, Directorate of Science and Technology, and Office of Security that pertain to medical support for operations, the CIA "Office of Medical Services (OMS)," and "medical intelligence."¹ The CIA Office of Medical Services has been an integral part of the Agency since 1947. In 1997, Dr. John Tietjen, Director of OMS from 1947-1974, was designated as a "CIA trailblazer" by former DCI George Tenet. Dr. Tietjen was instrumental in establishing the Agency's worldwide medical program and pioneering aspects of medical and psychological field support for clandestine operations. Since at least 1963, the "VIP Health Watch" program to monitor the psychological and physical health of foreign leaders has been an integral component of the Agency's leadership analysis efforts. Since 1949, the CIA Office of Scientific Intelligence has been responsible for producing intelligence on foreign biomedical capabilities, trends, and research and development for inclusion in various analytical products, such as National Intelligence Estimate 11-6-56, Capabilities and Trends in Soviet Science and Technology.

My interest in the above subjects stems from research towards a scholarly history of medical intelligence and medical support for clandestine operations from World War II to the present. My research is based, first and foremost, on the extensive archival records held in the United States National Archives, Center for Military History, US Army Military History Institute and several private archival collections. I have made extensive use of declassified archival material related to this subject that are maintained in Record

¹ DOD Dictionary of Military Terms defines "medical intelligence" as "That category of intelligence resulting from collection, evaluation, analysis, and interpretation of foreign medical, bio-scientific, and environmental information that is of interest to strategic planning and to military medical planning and operations for the conservation of the fighting strength of friendly forces and the formation of assessments of foreign medical capabilities in both military and civilian sectors." DOD Joint Publication 1-02, 7 October 2004

Group 263 at the National Archives, including the CIA Research Tool (CREST) CD-ROM also located at NARA. I have also found important documents on the CIA Electronic Reading Room website (<http://www.foia.cia.gov>).

The first part of my book will be an in-depth organizational and administrative history of medical intelligence within the United States military beginning in 1933 to the present day, Armed Forces Medical Intelligence Center (AFMIC). I will attempt to trace the development of medical intelligence doctrine over the past 60 years. I will include an analysis of the intelligence cycle (i.e., tasking, collection, analysis, production, and dissemination) from the standpoint of medical intelligence, and using historical examples, will show how each element of the cycle works in this field. I also hope to discuss the role of the CIA Office of Scientific Intelligence/Medicine Division and Life Sciences Division in the production of medical intelligence for the US Intelligence Community, and specifically, the National Intelligence Surveys and various National Intelligence Estimates.

The second part of my book deals with "medical support for intelligence operations." This section will essentially constitute a history of the Office of Strategic Services (OSS) Medical Services Branch and its eventual evolution into the CIA Office of Medical Services. I will then attempt to describe the organizational and administrative history of CIA/OMS from its inception in 1947 under Dr. John Tietjen, to as close to the present time as possible. The focus of this section will be on the development of the basic policies and practices of OMS; historical problems related to the recruitment and retention of career physicians; the Medical Career Service Board, the development of individual OMS subunits such as the Operations Division, Field Support Staff, and the Psychiatric Division; the "VIP Health Watch" program, and the Regional Medical Officer program.

I would like to point out that several recent widely reported news stories have underscored the public's interest in the medical aspects of the U.S. intelligence effort. For example, extensive speculation has been made on the circumstances surrounding the exact cause of death of Palestinian President Yasir Arafat, the alleged poisoning of Ukrainian opposition candidate Viktor Yushchenko, and the health of Osama Bin Laden. These cases have highlighted the public interest in the government's effort to monitor the health of such individuals. The recent outbreak of SARS in China, and the proliferation of HIV/AIDS in Sub-Saharan Africa and India have highlighted the vulnerability of developing nations in handling emerging public health issues. The public has an interest in our nation's intelligence efforts to monitor epidemics and pandemics which may potential destabilize areas of strategic interest or possibly directly effect U.S. national security.

I have performed an exhaustive search of the open source intelligence literature and have found a veritable dearth of scholarly research on the field of medical intelligence or medical support for Agency operations. Moreover, extant literary coverage of the CIA Office of Medical Services is limited to one-line blurbs, mainly focusing on lurid tales of mind control experiments gone awry, assassination plots, or errant

psychological profiles of Daniel Ellsberg or former Haitian President Jean-Bertrand Aristide. I am confident that my book will make a unique scholarly contribution to the body of intelligence literature and shed a positive light on a fascinating and little known aspect of intelligence work. The declassification of even portions of those files, or information contained therein, would greatly assist my endeavor to make a substantial contribution to the public's understanding of the role of the Central Intelligence Agency and the government in these areas.

Sincerely



Jonathan D. Clemente, MD

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Andrew M. Nacin



28 December 2004

Edmund Cohen
Director of Information Management Services
Central Intelligence Agency
Washington, DC 20505

SUBJECT: Decennial Review of Operational Files Designations

Mr. Cohen,

With regards to operational files designations, former CIA director Richard Helms in his memoir *A Look Over My Shoulder* said the following with regards to the U.S.S. Liberty A.G.T.R. 5, an "auxiliary general technical research" ship outfitted as an NSA/NSG (National Security Agency/Naval Security Group) mobile intelligence gathering unit, sailing in the Eastern Mediterranean Sea on 8 June 1967, when it was attacked by Israel Defense Forces from the air and sea:

"Israeli authorities subsequently apologized for the incident, but few in Washington could believe that the ship had not been identified as an American naval vessel. Later, an interim intelligence memorandum concluded the attack was a mistake and not made in malice against the U.S....

"I had no role in the board of inquiry that followed, or the board's finding that there could be no doubt that the Israelis knew exactly what they were doing in attacking the Liberty. I have yet to understand why it was felt necessary to attack this ship or who ordered the attack." [emphasis added]

I would like this "board's finding" that Mr. Helms mentions to be declassified so it can be released to the general public. I will also be submitting a FOIA (Freedom of Information Act, 5 U.S.C. § 552) request on this matter.

I look forward to your reply on this matter. I would appreciate your communicating with me by telephone or email, rather than by mail, if you have questions or even comments regarding this request. Thank you for your assistance.


Sincerely,



Andrew M. Nacin



Paul Wolf


paulwolf@icdc.com

December 28, 2004

Edmund Cohen
Director of Information Management Services
Central Intelligence Agency
Washington, DC 20505

RE: Comments on Decennial Review of CIA Operational Files

Dear Mr. Cohen:

I am a historical researcher specializing in American intelligence agencies. I publish my work on the internet at <http://www.icdc.com/~paulwolf/index.htm>. Two of my webpages, one on the OSS and the other on the counterinsurgency war in Colombia are also archived by the U.S. Army Special Warfare Center and School at Fort Bragg, N.C. These webpages contain about 4000 images of declassified documents, presented in outline form. I have also written webpages about F.B.I. counterintelligence programs, the Cuban revolution, and the political histories of Pakistan and Afghanistan.

Over the past four years, I've spent about 300 days working at the National Archives in College Park, MD. I have also worked in the archives at Ft. Bragg and Ft. McNair, in the FBI's FOIA reading room, and elsewhere. I have filed several FOIA requests with the CIA. These were either met with "Glomar" responses -- neither confirming nor denying the existence of any information -- or with a response that the CIA's records systems are not organized to accommodate my request. One of the CIA's "Glomar" responses has been in litigation for about three years now. I am so frustrated by my experience with the CIA that I'm writing a law review article on the circularity of the CIA's legal arguments, which have effectively circumvented the broad disclosure requirements of the Freedom of Information Act. I intend to vigorously pursue the judicial review route *pro se* until the CIA's disclosure policies change.

I am writing to express my interest and describe the historical value of a wide variety of CIA operational files. If they are not releasable yet, they should at least be preserved for future historians. Neither the CIA Information Act nor its legislative history (House Report No. 98-726 (I & II) and Senate Report No. 98-305) contemplate that decennial review be used as an opportunity to destroy files. The purpose of the CIA Information Act was to relieve the Central Intelligence Agency from the burden of processing unproductive FOIA requests for operational files, which almost invariably proved not to be releasable under the FOIA. At the same time, the CIA Information Act

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was intended to improve the CIA's ability to process FOIA requests in a timely manner, preserving undiminished the amount of meaningful information releasable to the public under the FOIA, as well as to provide additional assurance of confidentiality to CIA sources. Nowhere in Section 702 of the National Security Act (50 USC 431) is the destruction of records contemplated in the decennial review process. The recent 9/11 Recommendations Implementation Act did nothing to change this.

The records of the OSS provide a model example for how CIA operational files should be released to the public. Those records have been well preserved and organized, and are perhaps the best primary materials available on the Second World War. As you may know, it was not until William Casey became DCI that the CIA would agree to release these files to the National Archives in unredacted form. I believe that the best solution for the CIA would be to send operational files more than 25 years old to the National Archives, and to let the National Archives declassify them. The FOIA process is time consuming and difficult for both sides. Time has shown that the unredacted records of the OSS may be released to the public without any identifiable harm to our national security. In the words of Victor Marchetti, what we are facing is a cult of secrecy which serves neither the public interest nor the interests of the CIA.

My personal interest is in the files of the Directorate of Operations, including the Covert Action Staff (CAS), Special Operations (SO), the Counterintelligence Staff, Regional Divisions of the Directorate of Operations, the National Collection Division (NCD), and the Foreign Resources Division (FRD). As the names of these departments have changed over time, I am also interested in their predecessors and successors. I am not personally interested in the Directorate of Science and Technology nor the Office of Security.

While Special Operations have received widespread media attention, political warfare practiced by the Covert Action Staff is probably more important from a historical perspective, and is entirely missing from any historical accounts I have seen. This means that the voting public is uninformed about many important aspects of our history. This is exactly the problem Congress was trying to solve in passing the Freedom of Information Act, and in its subsequent strengthening of the judicial review provisions of the FOIA.

Appendix I to this letter consists of a list of known CIA special operations, adapted from the work of William Blum. I expect this is far from a complete accounting of even the SO files. Mr. Blum takes a decidedly negative view of the CIA's track record. Since the CIA does not release its operational files, Mr. Blum's accounting is the historical record. It is in the CIA's interest, and in the interest of the reputation of the United States, to allow others to add whatever context the CIA operational files may provide.

It is my sincere hope that my comments are taken into consideration in your decennial review. There is no doubt of the public interest in the preservation and release of CIA operational files. The mere mention of the CIA in connection with any event is

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practically guaranteed to to be newsworthy. If the work of the CIA Directorate of Operations has been significant, then it is historically important.

I hope that the question you are facing is when the files will be releasable, and not whether they can be destroyed. To use the decennial review as an excuse to destroy CIA operational files would be contrary to the purpose of the CIA Information Act, and against the interests of both the United States and your agency.

Sincerely,



Paul Wolf

Appendix I - Known or Suspected CIA Special Operations

Operation PAPERCLIP -- Reinhard Gehlen, Hitler's master spy, had built up an intelligence network in the Soviet Union. After the war, the CIA created the "Gehlen Organization," a band of refugee Nazi spies who reactivated their networks in Russia. These included SS intelligence officers Alfred Six and Emil Augsburg (who massacred Jews in the Holocaust), Klaus Barbie (the "Butcher of Lyon"), Otto von Bolschwing (the Holocaust mastermind who worked with Eichmann). Gehlen inflated Soviet military capabilities at a time when Russia was still rebuilding its devastated society, in order to inflate his own importance to the Americans (who might otherwise punish him).

In 1948, Gehlen almost convinced the Americans that war was imminent, and the West should make a preemptive strike. In the 50s he produced a fictitious "missile gap." The Russians had thoroughly penetrated the Gehlen Organization with double agents, undermining the very American security that Gehlen was supposed to protect.

1947: Greece -- President Truman requested military aid to Greece to support right-wing forces fighting communist rebels. For the rest of the Cold War, Washington and the CIA backed notorious Greek leaders with deplorable human rights records.

1948: Italy -- The CIA influenced democratic elections in Italy, where Italian communists threatened to win the elections. The CIA bought votes, broadcast propaganda, threatened and beat up opposition leaders, and infiltrated and disrupted their organizations.

Colombia -- Jorge Eliecer Gaitan is assassinated during the formative meeting of the Organization of America States (OAS), leading to ten years of civil war in that country. The CIA's first director, Roscoe Hillenkoetter, demonstrably lies to a congressional investigating committee of the CIA's first "intelligence failure."

1949: Radio Free Europe -- The CIA creates its first major propaganda outlet, Radio Free Europe. Over the next several decades, it was illegal to publish transcripts of its broadcasts in the U.S.

Late 40's: Operation MOCKINGBIRD -- The CIA recruited American news organizations and journalists to become spies and disseminators of propaganda. Frank Wisner, Allan Dulles, Richard Helms and Philip Graham headed the effort. Graham was publisher of The Washington Post, which became a major CIA player. Eventually, the CIA's media assets included ABC, NBC, CBS, Time, Newsweek, Associated Press, United Press International, Reuters, Hearst Newspapers, Scripps-Howard, Copley News Service and more. By the CIA's own admission, at least 25 organizations and 400 journalists became CIA assets.

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1953: Iran -- CIA overthrew the democratically elected Mohammed Mossadegh in a military coup, after he threatened to nationalize British oil. The CIA replaces him with a dictator, the Shah of Iran, whose secret police, SAVAK, was as brutal as the Gestapo.

MK-ULTRA -- Inspired by North Korea's brainwashing program, the CIA began experiments in mind control. Funded in part by the Rockefeller and Ford foundations, research included propaganda, brainwashing, public relations, advertising, hypnosis, and other forms of suggestion. While the CIA has testified that MKULTRA files were destroyed, researchers are highly doubtful.

1954: Guatemala -- CIA overthrew the democratically elected Jacob Arbenz in a military coup. Arbenz had threatened to nationalize the Rockefeller-owned United Fruit Company. Arbenz was replaced with a series of right-wing dictators whose bloodthirsty policies killed over 100,000 Guatemalans in the next 40 years.

1954-1958: North Vietnam -- CIA officer Edward Lansdale spent four years trying to overthrow the communist government of North Vietnam. The CIA also attempted to legitimize a tyrannical regime in South Vietnam headed by Ngo Dinh Diem.

1956: Hungary -- Radio Free Europe incited Hungary to revolt by broadcasting Khrushchev's Secret Speech, in which he denounced Stalin. It also hinted that American aid will help the Hungarians fight. The aid fails to materialize as Hungarians launched a doomed armed revolt, which only invited a Soviet invasion. The conflict killed 7,000 Soviets and 30,000 Hungarians.

1957-1973: Laos -- The CIA carried out approximately one coup per year trying to nullify Laos' democratic elections. In the late 50s, the CIA created an "Army Clandestine" of Asian mercenaries to attack the Pathet Lao. After the CIA's army suffered numerous defeats, the U.S. started bombing, dropping more bombs on Laos than all the U.S. bombs dropped in World War II. A quarter of all Laotians eventually became refugees.

1959: Haiti -- The U.S. military helped "Papa Doc" Duvalier become dictator of Haiti. He created his own private police force, the "Tonton Macoutes," who terrorized the population with machetes. They killed over 100,000 during the Duvalier family reign.

Mid to Late 1950s: Colombia -- The CIA manipulated Colombian politics through the Movimiento Revolucionario Liberal (MRL). The history of the counterinsurgency in Colombia has been one of continuous disaster.

1950s-1960s: East Pakistan -- now Bangladesh, the anti-communist program in East Pakistan may have laid the foundation for resentment and eventual independence from West Pakistan. The CIA's role, if any, is unclear.

1961: The Bay of Pigs -- The CIA sends 1,500 Cuban exiles to invade Castro's Cuba. But "Operation Mongoose" fails, due to poor planning, security and backing. The

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Congo (Zaire) -- A CIA-backed military coup installed Mobutu Sese Seko as dictator.

1966: The Ramparts Affair -- The radical magazine Ramparts began a series of unprecedented anti-CIA articles. Among their scoops: the CIA had paid the University of Michigan \$25 million dollars to hire professors to train South Vietnamese students in covert police methods. MIT and other universities received similar payments. Ramparts also revealed that the National Students' Association to be a CIA front. Students were sometimes recruited through blackmail and bribery, including draft deferments.

1960s: Congress for Cultural Freedom -- This CIA operation recruited academics to promote cultural programs in the third world. Subsequent exposure has made the work of real humanitarians more difficult, as they are now suspected of being CIA spies.

1960s: Ford Foundation -- The "Ideological Offensive" of the Cold War involved major foundations and OSS psychological warfare veterans, co-opting leftist elements in the U.S. and steering them away from their radical positions. These foundations promoted the war in Vietnam and television as an instrument of psychological manipulation.

1967: Greece -- A CIA-backed military coup overthrew the government two days before the elections. The favorite to win was George Papandreu, the liberal candidate. During the next six years, the "reign of the colonels" - backed by the CIA - ushered in the widespread use of torture and murder against political opponents.

PHOENIX -- The CIA helped South Vietnamese agents identify and murder alleged Viet Cong leaders operating in South Vietnamese villages. According to a 1971 congressional report, this operation killed about 20,000 "Viet Cong."

1968: CHAOS -- The CIA has been illegally spying on American citizens since 1959, but with Operation CHAOS, President Johnson dramatically boosts the effort. CIA agents go undercover as student radicals to spy on and disrupt campus organizations protesting the Vietnam War. They are searching for Russian instigators, which they never find. CHAOS will eventually spy on 7,000 individuals and 1,000 organizations.

Bolivia -- A CIA-organized military operation captured legendary guerilla Che Guevara. The Bolivian government executed him to prevent worldwide calls for clemency.

1969: Uruguay -- The notorious CIA torturer Dan Mitrione arrived in Uruguay, a country torn with political strife. Whereas right-wing forces previously used torture only as a last resort, Mitrione convinced them to use it as a routine, widespread practice.

1970: Cambodia -- The CIA overthrew Prince Sihanouk, who was popular among Cambodians for keeping them out of the Vietnam War. He was replaced by CIA puppet Lon Nol, who immediately sent Cambodian troops into battle. This unpopular move strengthened the Khmer Rouge, which achieved power in 1975 and massacred millions of its own people.

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1971: Bolivia -- After half a decade of CIA-inspired political turmoil, a CIA-backed military coup overthrew the leftist President Juan Torres. In the next two years, dictator Hugo Banzer had over 2,000 political opponents arrested without trial, then tortured, raped and executed.

Haiti -- "Papa Doc" Duvalier died, leaving his 19-year old son "Baby Doc" Duvalier the dictator of Haiti. His son continued his bloody reign with full knowledge of the CIA.

1972: Watergate Break-in -- President Nixon sent in a team of burglars to wiretap Democratic offices at Watergate. The team members had extensive CIA histories, including James McCord, E. Howard Hunt and five of the Cuban burglars. They worked for the Committee to Reelect the President (CREEP), which disrupted Democratic campaigns and laundered Nixon's illegal campaign contributions. CREEP's activities were funded and organized by another CIA front, the Mullen Company.

1973: Chile -- The CIA overthrew and purportedly assassinated Salvador Allende, Latin America's first democratically elected socialist leader. The CIA replaced Allende with General Augusto Pinochet, who tortured and murdered thousands of his own countrymen in a crackdown on labor leaders and the political left.

Watergate Scandal -- The CIA's main collaborating newspaper in America, The Washington Post, reported Nixon's crimes long before any other newspaper. The two reporters, Woodward and Bernstein, made almost no mention of the CIA's many fingerprints all over the scandal. It was later revealed that Woodward was a Naval intelligence briefer to the White House, and knew many important intelligence figures, including General Alexander Haig. His main source, "Deep Throat," was probably one of those.

1975: Australia -- The CIA helped topple the democratically elected, left-leaning government of Prime Minister Edward Whitlam.

Angola -- Henry Kissinger launched a CIA-backed war in Angola. The CIA backed the brutal leader of UNITAS, Jonas Savimbi. This polarized Angolan politics and drove his opponents into the arms of Cuba and the Soviet Union for survival. Congress cut off funds in 1976, but the CIA was able to run the war off the books until 1984, when funding was legalized again. This entirely pointless war killed over 300,000 Angolans.

1979: Iran -- The CIA failed to predict the fall of the Shah of Iran, a longtime CIA puppet, and the rise of Muslim fundamentalists who were furious at the CIA's backing of SAVAK, the Shah's bloodthirsty secret police. In revenge, the Muslims took 52 Americans hostage in the U.S. embassy in Tehran.

Lebanon -- CIA trains falangists on how to bomb civilians

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El Salvador -- An idealistic group of young military officers, repulsed by the massacre of the poor, overthrew the right-wing government. However, the U.S. compelled the inexperienced officers to include many of the old guard in key positions in their new government.

Nicaragua -- Anastasio Somoza II, the CIA-backed dictator, fell. The Marxist Sandinistas took over government, and were initially popular because of their commitment to land and anti-poverty reform. Somoza had a murderous and hated personal army called the National Guard. Remnants of the Guard became the Contras, who fought a CIA-backed guerilla war against the Sandinista government throughout the 1980s.

1970s: India -- Morarji Desai, a top Indian government official, was reportedly in the pay of the CIA.

1980: El Salvador -- The Archbishop of San Salvador, Oscar Romero, pled with President Carter to stop aiding the military government slaughtering his people. Carter refused. Shortly afterwards, right-wing leader Roberto D'Aubuisson had Romero shot through the heart while saying Mass. The country soon dissolved into civil war, with the peasants in the hills fighting against the military government. The CIA and U.S. Armed Forces supplied the government with overwhelming military and intelligence superiority. CIA-trained death squads roamed the countryside, committing atrocities such as El Mozote in 1982, where they massacred between 700 and 1000 men, women and children. By 1992, some 63,000 Salvadorans were killed.

1981: Iran/Contra Scandal begins-- The CIA began selling arms to Iran at high prices, using the profits to arm the Contras fighting the Sandinista government in Nicaragua. The CIA's Freedom Fighter's Manual disbursed to the Contras included instructions on economic sabotage, propaganda, extortion, bribery, blackmail, interrogation, torture, murder and political assassination.

1983: Honduras -- The CIA gave Honduran military officers the Human Resource Exploitation Training Manual - 1983, which taught how to torture people. Honduras' notorious "Battalion 316" used these techniques, with the CIA's full knowledge, on thousands of leftist dissidents. At least 184 are murdered.

1986: Eugene Hasenfus -- Nicaragua shot down a C-123 transport plane carrying military supplies to the Contras. The lone survivor, Eugene Hasenfus, turned out to be a CIA employee, as were the two dead pilots. The airplane belonged to Southern Air Transport, a CIA front. The incident made a mockery of President Reagan's claims that the CIA is not illegally arming the Contras.

Iran/Contra Scandal -- Although the details had long been known, the Iran/Contra scandal finally captured the media's attention in 1986. Congress held hearings, and several key figures (like Oliver North) lied under oath to protect the intelligence community.

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planners had imagined that the invasion would spark a popular uprising against Castro — which never happens. A promised American air strike also never occurs. This is the CIA's first public setback, causing President Kennedy to fire CIA Director Allen Dulles.

Dominican Republic -- The CIA purportedly assassinated Rafael Trujillo, a murderous dictator Washington had supported since 1930.

Ecuador -- The CIA-backed military forced the democratically elected President Jose Velasco to resign. Vice President Carlos Arosemana replaced him; the CIA filled the now vacant vice presidency with its own man.

Congo (Zaire) -- The CIA purportedly assassinated the democratically elected Patrice Lumumba. Four years of political turmoil followed.

1963: Assassination of US President John F. Kennedy -- While many CIA files related to the assassination of President Kennedy have been released pursuant to an act of Congress, more than 25 years have passed since the assassination, and the CIA's remaining files should now be transferred to the National Archives for review.

1963: Dominican Republic -- The CIA overthrew democratically-elected Juan Bosch in a military coup. The CIA installed a repressive, right wing junta in his place.

Ecuador -- A CIA-backed military coup overthrows President Arosemana, whose independent (not socialist) policies have become unacceptable to Washington. A military junta assumed command, canceled the 1964 elections, and began abusing human rights.

1964: Brazil -- A CIA-backed military coup overthrew the democratically elected government of Joao Goulart. The junta that replaced it became one of the most bloodthirsty in history. General Castelo Branco created Latin America's first death squad to hunt down "communists" for torture, interrogation and murder. Often these "communists" were no more than Branco's political opponents. Later it was revealed that the CIA trained the death squads.

1965: Indonesia -- The CIA overthrew the democratically elected Sukarno in a military coup. The CIA had been trying to eliminate Sukarno since 1957, using everything from attempted assassination to sexual intrigue, for nothing more than his declaring neutrality in the Cold War. His successor, General Suharto, massacred between 500,000 to 1 million civilians accused of being communists. The CIA supplied the names of countless suspects.

Dominican Republic -- A popular rebellion broke out, promising to reinstall Juan Bosch as the country's elected leader. The revolution was crushed when U.S. Marines landed to uphold the military regime by force.

Greece -- With the CIA's backing, the king removed George Papandreou as prime minister.

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Haiti -- Rising popular revolt in Haiti meant that "Baby Doc" Duvalier will remain "President for Life" only if he had a short one. The U.S. fled the despotic Duvalier to the South of France for a comfortable retirement. The CIA then rigged the upcoming elections in favor of another right-wing military strongman. However, violence kept the country in political turmoil for another four years. The CIA tried to strengthen the military by creating the National Intelligence Service (SIN), which suppressed popular revolt through torture and assassination.

1989: Panama -- The U.S. invaded Panama to overthrow a dictator of its own making, General Manuel Noriega. Noriega had been on the CIA's payroll since 1966, and had been transporting drugs with the CIA's knowledge since 1972.

1980s: Afghanistan -- The CIA sponsors Gulbuddin Hekmatyar, Osama bin Laden, and an assortment of other unsavory Afghan mujahideen. While these operations seem to have contributed to the dissolution of the Soviet Union, they would come back to bite us later, as would our cohorts, the ISI. The CIA's knowledge of Charlie Wilson's contacts with Mossad also need to be investigated to determine Israel's influence in these events.

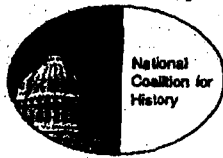
1980s: Iraq -- US supports Saddam Hussein and provides chemical weapons despite their use against Iran. The CIA's role is unknown.

1990: Haiti -- Competing against 10 comparatively wealthy candidates, leftist priest Jean-Bertrand Aristide captured 68 percent of the vote. After only eight months in power, however, the CIA-backed military deposed him. More military dictators brutalize the country, as thousands of Haitian refugees escaped the turmoil in barely seaworthy boats. As popular opinion called for Aristide's return, the CIA began a disinformation campaign painting the courageous priest as mentally unstable.

1991: The Fall of the Soviet Union -- The CIA failed to predict this most important event of the Cold War. This suggests that it had been so busy undermining governments that it hadn't been doing its primary job: gathering and analyzing information. The fall of the Soviet Union also robbed the CIA of its reason for existence: fighting communism.

1993: Haiti -- The chaos in Haiti grew so bad that President Clinton had no choice but to remove the Haitian military dictator, Raoul Cedras, on threat of U.S. invasion. The U.S. occupiers did not arrest Haiti's military leaders for crimes against humanity, but instead ensured their safety and rich retirements. Aristide was returned to power only after being forced to accept an agenda favorable to the country's ruling class.

2001: World Trade Center and Pentagon attacks -- While U.S. air defenses "stand down," soon-to-be DCI Porter Goss entertains Mahmud Ahmad, Chief of the Pakistani Inter-Services Intelligence, who is linked by the Indian media to a wire transfer of \$100,000 to the bank account of Mohammed Atta just before the attacks. Ahmad was relieved of service; however, the 9/11 Commission declined to investigate this most curious aspect of 9/11.



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Edmund Cohen
Director of Information Management Services
Central Intelligence Agency
Washington D.C. 20505

January 18, 2005

Dear Director Cohen:

On behalf of the National Coalition for History, a consortium of over 70 history and archives related organizations, we would like to provide the following comments on the CIA decennial review of agency operational files.

The CIA Information Act of 1984 defines "operations" files as foreign intelligence or counterintelligence materials from the Directorate of Operations, scientific or technical documentation from the Directorate of Science and Technology, and investigations of foreign intelligence or counterintelligence sources from the Office of Personnel Security. The decennial review requires serious consideration by the Director of Central Intelligence (DCI) to re-examine and exempt and ultimately release files for their historical value or public interest. We urge you to do just that.

We believe that operational files older than 30 years can and should be declassified for several reasons. First, because of diminished if not non-existent security concerns and second, because of the potential for increased usefulness of these records to historians and political scientists whose speciality area is the history of U.S. intelligence.

Declassification serves the purpose of historical value stated in the CIA Information Act by enabling historians to gather a wide range of sources in their ongoing efforts to assess the past. The CIA's previous declassification efforts such those involving the JFK assassination records and Chile during the Cold War, and though not CIA records, the National Security Agency's 1996 decision to release of the VENONA decrypts all ended up possessing immense historical and public interest values. They also were all released without any harm to national security.

There is also little doubt that the history of U.S. intelligence efforts throughout the world is especially important and of interest to the public, especially given the contemporary threats posed by international terrorism. Declassification serves the public interest by enhancing the credibility of the CIA, offering lessons for future policy makers, and setting the record straight about important and at times controversial historical events. Declassification can dispel popular myths about a particular agency's involvement in a particular incident in American history. The release of the JFK assassination records, for example, set the record straight with respect to the CIA's involvement (in this case a lack of involvement) in the controversy surrounding the death of the president.

In advancing the objective of greater government openness, we urge reevaluation of the existent operational series file system. It is of concern to us that there is some evidence that the Agency may be inappropriately designating some materials as "operational" merely because they fall within the same file series as operational documents. Therefore, all such files should be carefully reviewed (or re-reviewed as the case warrants) and, when appropriate, materials should be released under provisions of current law.

Scholars also are finding it increasingly frustrating that promises made by high-ranking CIA officials relating to release of operational files have not always been brought to full fruition despite specific promises to do so; some such promises have even been made before Congressional committees. For example, on 28 September 1993, in comments made before the House Permanent Select Committee on

Sustaining Supporters: American Association for State and Local History; American Council of Learned Societies; American Historical Association; American Political Science Association; American Studies Association; Council of State Historical Records Coordinators; The History Channel; Midwest Archives Conference; National Council on Public History/IUPUI Department of History; Organization of American Historians; Society of American Archivists; Society for Historians of American Foreign Relations; Society for Military History; Southern Historical Association. **Institutional Supporters:** Association For Documentary Editing; Glider Lehman Institute of American History; History Associates, Inc.; Society for History in the Federal Government; Society of American Historians; Western History Association. **Contributing Supporters:** Over fifty other historical and archival organizations

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Intelligence hearing on "Increasing Accessibility to CIA Documents," DCI R. James Woolsey declared that he had "directed review for declassification of significant Cold War covert actions more than 30 years old." (See page 4 of the hearing record). In his testimony, the Director specified for review such CIA actions as activities in support of democracy in France and Italy in the 1940s and 1950s; support to Tibetan guerrillas in the 1950s and early 1960s; operations against North Korea during the Korean War; operations in Laos in the 1960s; coups attempts against and against Prime Minister Mossadeq in Iran, and operations in the Dominican Republic and the Congo. Little has come of any of these promises in terms of comprehensive review and release of relevant documentary materials.

The National Coalition for History also finds troubling recent assertions by some scholars that the CIA is not in full compliance with provisions of the Freedom of Information Act (FOIA) with respect to the subject files. The principles behind FOIA seek to create an informed electorate and open society, but there is a growing body of evidence that the CIA has been denying previously released information to researchers or refused additional information about previously declassified information that is of particular interest to historians. For example, one broad assertion of exemption is the Office of Electronic Intelligence information from 1962-66 that was already declassified for the National Archives. The CIA has reverted back to refusing to release information and asserted the claim that these files are relevant again to current activities.

We also note that the DCI Historical Review Panel conclusions and recommendations from September 1996 seem to have gone largely unimplemented. We believe most of those recommendations still have relevance today. The CIA should properly report this panel's findings and the CIA's response to these findings to appropriate congressional committees on intelligence.

Finally, in recent years Western historians have gained access to historically significant documents from Russia, Eastern Europe and even the People's Republic of China that relate to the Cold War era. Gaining access to similar related material in this country remains frustrated by the efforts of federal agencies including the CIA in what appears to be an effort to implement outmoded and outdated intelligence laws. As a consequence, the official records of these former Eastern block countries that have been released may well be painting a picture of the CIA that may not be correct. Only the release of the Agency's own records will enable scholars to set the record straight.

In conclusion, we recommend the CIA consider targeted declassification of selected files or parts of such operational files, and project a final date for declassification of the older documents passed over by this review as well.

Thank you for your consideration of our comments.

Sincerely,

R. Bruce Craig
Director

CC: Senate Select Committee on Intelligence
House Permanent Select Committee on Intelligence

FROM :

FAX NO. : 5124718986

Jan. 18 2005 11:51 AM PT



SCHOOL OF LAW

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M E M O R A N D U M

January 18, 2005

VIA FAX

TO: Edmund Cohen, Director
Information Management Services, CIA

FROM: Michael J. Churgin
Chair, Committee on Documentary Preservation
American Society for Legal History
Raybourne Thompson Centennial Professor in Law

SUBJECT: 69 Fed.Reg. 76449 (December 21, 2004)

The historical value of the three categories of CIA operational files noted in the Federal Register is significant, and the material should be made available to researchers and others to the maximum extent possible.

The best evidence of the historical use of the operational files might be the opening of records under the special act which created the JFK Assassination Records Review Board. The Board, composed in part of noted historians in the diplomatic and national security fields, used its authority to direct the disclosure of various operational records. The CIA acquiesced in some actions of the Board and unsuccessfully sought presidential review of other decisions. These records were of significant historical value.

The Committee on Documentary Preservation of the American Society for Legal History stands ready to assist. I may be contacted at the above address, by telephone at 512.232.1330 or by e-mail at mchurgin@mail.law.utexas.edu

JAN-19-2005 15:01

NHPRC

202 501 5601

**National Archives and Records Administration**8601 Adelphi Road
College Park, Maryland 20740-6001**6**

JAN 19 2005

Edmund Cohen
Director of Information Management Services
Central Intelligence Agency
Washington, DC 20505By fax:

RE: FR Doc. 04-27840, Notice of Decennial Review of Operational Files Designations

Dear Mr. Cohen:

Thank you for the opportunity to provide comments for consideration during the decennial review of the CIA's operational files. The National Archives and Records Administration (NARA) submits three comments pertaining to the historical value of these records.

In its Federal Register notice, the CIA provides broad outlines of three types of operational files within the Directorates of Operations, Science and Technology, and Security that are covered by this exemption. NARA believes that it would be in a better position to assist the CIA in identifying specific bodies of records for removal from exempted status if properly cleared and briefed NARA staff members were permitted to examine more closely the specific series to which the exemption applies.

Next, NARA recognizes that CIA has turned over to us reference copies of records that it has reviewed for declassification. We believe that this reference material (in particular copies of documents contained in the CREST system) is beneficial to the research community, and we encourage the CIA to allow NARA to accession the complete series from which these selected and reviewed documents originate. This will allow the archival integrity (provenance and original order) to be maintained. It may also increase the benefit to future researchers by improving the rate in which access demand requests are resolved.

Finally, many of the exempted records are permanently valuable and may be past due for accessioning. We encourage the CIA to work with appropriate NARA units to ensure that all such records are appropriately scheduled and that permanently valuable records are transferred in a timely manner. In particular, CIA has scheduled some series of records for transfer to NARA when 50 years old. It may be possible to use the required decennial review as a mechanism for blocking and transferring records to NARA. We recommend that series or blocks of series created between 1947 and 1955 and eligible for accessioning be transferred to us as part of this review process.

Sincerely,

John W. Carlin
Archivist of the United States

The National Security Archive

The George Washington University
Gelman Library, Suite 701
2130 H Street, N.W.
Washington, D.C. 20037

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nsarchive@gwu.edu
www.nsarchive.org

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January 19, 2005

Via Facsimile

Edmund Cohen
Director of Information Management Services
Central Intelligence Agency
Washington, DC 20505

RE: Request for Public Comment on CIA Decennial Review of Operational
File Designations, 69 Fed. Reg. 244, 76449-76450 (December 21, 2004)

Dear Mr. Cohen:

Thank you for the opportunity to comment on the Central Intelligence Agency's ("CIA") decennial review of the record categories in the Directorates of Operations and of Science and Technology and the Office of Security that are currently designated under the CIA Information Act of 1984, 50 U.S.C. Secs. 431-432, as exempt from the search and review requirements of the Freedom of Information Act ("FOIA"), 5 U.S.C. Sec. 552.

These comments are submitted on behalf of the National Security Archive ("the Archive"), a not-for-profit foreign policy research institute and library that uses FOIA to assemble collections of declassified government agency records documenting key U.S. foreign policy issues. The Archive's publications are widely distributed through both print and electronic means. In its work, the Archive regularly submits FOIA requests to the CIA and frequently receives denials of FOIA requests on the basis of the operational files exception. These denials are received even in cases involving records that are several decades old, that concern publicly acknowledged programs and activities about which there already is substantial declassified information in the public record, and that do not appear from their title or description to meet the statutory definition of an operational file.

Introduction

As Congress recognized when it enacted the CIA Information Act,

The [FOIA] has played a vital part in maintaining the American people's faith in their government, and particularly in agencies like the CIA that must necessarily operate in secrecy. In a free society, a national security agency's ability to serve the national interest depends as much on public confidence that its powers will not be misused as it does on the confidence of intelligence sources that their relationships with the CIA will be protected. Central Intelligence Agency Information Act, H. Rep. No. 98-726, Part I, at 9 (1984)

[The CIA Information Act] confirms that the CIA maintains information about which the public may legitimately inquire. It recognizes that the FOIA plays a vital part in maintaining the public's

An independent non-governmental research institute and library located at the George Washington University, the Archive collects and publishes declassified documents obtained through the Freedom of Information Act. Publication royalties and tax deductible contributions through The National Security Archive Fund, Inc. underwrite the Archive's Budget.

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faith in government agencies, including agencies like the CIA which must necessarily operate substantially in secret. The continued availability of information under the FOIA helps to foster public confidence that the powers of the CIA are not being misused and that the CIA is serving the national interest. Central Intelligence Agency Information Act, H. Rep. No. 98-726, Part II, at 6 (1984).

It is for these reasons that the Archive urges the CIA to rigorously examine its prior designation of records as operational and to narrow the categories of materials that are exempt from the FOIA. The significant barrier posed by the broad designation of records as operational and exempt from FOIA interferes with the ability of scholars, researchers, and the public to understand the history of U.S. intelligence and to learn from past experiences. Moreover, the CIA's practice with respect to its designation of records as exempt from the search and review requirements of FOIA will serve as a model for other intelligence agencies that have more recently been granted operational files exceptions and have been using them improperly.¹

These comments address the following issues:

- (1) The Characteristics of Protected Operational Files;
- (2) The Public Interest in and Historical Value of CIA Operational Files;
- (3) Denied Records That Should be Removed from the Operational Files Designation; and
- (4) Removal of Records Older than 40 Years from the Operational Files Designation.

The Characteristics of Protected Operational Files

The CIA's request to Congress that the Agency be provided protection from FOIA for operational files was premised explicitly on the representation that the types of files sought to be protected are so sensitive that there are virtually no circumstances under which a FOIA review would result in the release of material to the public. The statutory definition provides:

(b) "Operational files" defined

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*

¹ See Spv Agencies Abuse Freedom of Information Exemptions (June 11, 2003) (available at <http://www2.gwu.edu/~nsarchiv/news/20030611/>). For example the National Reconnaissance Office ("NRO") has invoked its own operational file exception - which applies only to records that describe scientific and technical means of surveillance - to refuse to search for records that were released with only partial redaction in response to a 1992 FOIA request and that discuss a wide range of historical and organizational matters. These include "Report to the President's Foreign Intelligence Advisory Board on the National Reconnaissance Program, January 1 to June 30, 1967" and "Report to the 40 Committee on the National Reconnaissance Program, July 1, 1970 to June 30, 1971." It also has refused to search for the Final Report of former Director of the NRO Hans Mark - a document that is currently publicly available on the CIA CREST system at the National Archives and Records Administration and that discusses a wide range of matters beyond scientific and technical means of surveillance. Similar abuses of the operational files exception have occurred with the National Geospatial-Intelligence Agency.

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which foreign intelligence or counterintelligence is collected through scientific and technical systems; and
(3) files of the Office of Personnel 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.

50 U.S.C. Sec. 431(b) (emphasis added).

As Congress explained when it passed the CIA Information Act, this language describes:

Only those files concerning intelligence sources and methods. These files concern the intelligence process as distinguished from the intelligence product. They include information on the identities of and contact with human intelligence sources, the various methods used to collect intelligence from human and technical sources, and day-to-day administration and management of sensitive human and technical intelligence activities. These files are distinguished from what may be called intelligence product files the function of which is to store the intelligence gathered from human and technical sources.

Central Intelligence Agency Information Act, H. Rep. No. 98-726, Part I, at 520-21(1984) (section by section analysis).²

With respect to the Directorate of Science and Technology, Congress explained that it was seeking to protect only documentation of the "scientific and technical systems which collect foreign intelligence and counterintelligence." *Id.* at 21.

It was Congress's understanding that it would be possible for the CIA to easily distinguish between sensitive operational files and other files that should not be exempt from FOIA because of the "characteristics of CIA file systems." Central Intelligence Agency Information Act, H. Rep. No. 98-726, Part I, at 17 (1984). According to CIA testimony to Congress, the CIA maintained operational files in the Directorate of Operations for documents generated in the course of the conduct and management of intelligence gathering activities, but maintained raw and finished intelligence in separate files maintained by the Directorate of Intelligence. *Id.* at 17-18. The CIA also told Congress that policy matters, including operational policy matters, would be considered by CIA officials outside the Directorate of Operations and, even if eventually returned to operational files, they would be logged in the CIA's Executive Registry and remain subject to search and review. *Id.* at 19.

Based on this understanding of the special characteristics of the CIA filing system and numerous CIA assurances³, Congress considered *"it to be of primary importance in providing CIA relief from undue*

² See also Central Intelligence Agency Information Act, H. Rep. No. 98-726, Part I, at 5 (1984) (operational files describes "certain specifically identifiable CIA operational records systems, containing the most sensitive information directly concerning intelligence sources and methods. "); see *id.* at 9 (same).

³ Legislation to Modify the Application of the Freedom of Information Act to the Central Intelligence Agency, Hearings before the Subcommittee on Legislation of the Permanent Select Committee on Intelligence, House of Representatives, 98th Cong., 2d Sess., at 5, 12 (1984) (statements of John N. McMahon, Deputy Director of the Central Intelligence Agency that "by removing these sensitive operational files from the FOIA process, the public is deprived of no meaningful information whatsoever.").

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FOIA processing burdens to preserve undiminished the amount of meaningful information releasable to the public under the FOIA." Central Intelligence Agency Information Act, H. Rep. No. 98-726, Part I, at 17 (1984) (emphasis added).

The Public Interest in and Historical Significance of CIA Operational Files

Despite the controls on operational files, thousands of pages of CIA records have been declassified to reveal important information about past CIA actions and policymaking in which there is a strong public interest in disclosure but that appear to come from record groups that fall under the operational files designation. These include numerous records that were released as part of the Kennedy assassination declassification project which was conducted pursuant to separate statutory mandate. Thus, in the case of the Kennedy assassination release, there were hundreds of cables from the CIA stations in Miami and Mexico City that would have been wholly unreachable through FOIA due to the operational files exception. Yet the release was justified by the strong public interest in access to the information – including the need to satisfy public questions and concerns about the assassination of a sitting president – and the passage of time.

A similar large scale release took place under the Nazi War Crimes Disclosure Act and resulted in 800 CIA name and subject files. See www.archives.gov/media_desk/press_releases/nr04-55.html. As the Interagency Working Group overseeing the matter recognized, these documents “alter[ed] our understanding” of certain aspects of the Holocaust, including “the failure of U.S. and Allied intelligence to understand how closely tied the ‘Jewish question’ was to the central goals of the Nazi regime; the ways in which U.S. financial institutions helped the German government between 1936 and 1941, and the extent to which U.S. and Allied government aided and protected war criminals after the war.” *Id.* In particular these records:

Show that at least five of Eichmann’s associates, each a significant participant in Hitler’s war upon the Jews, had worked for the CIA. Additionally, the records reveal that at least 23 war criminals or Nazis were approached by the CIA for recruitment. The documents help answer the question of how and why these war criminals were given employment, assistance, and, in two cases, U.S. citizenship by a nation that had lost more than 300,000 lives in World War II.

Id. All these records – which could have been held back as “operational files” – were released without any resulting harm. There is no question that these records are historically valuable and that there is a strong public interest in their release despite the fact that they are operational files.

Indeed, the Archive’s own research projects on U.S. relations with geographic areas including Guatemala, Cuba, and Chile have all relied on records released under special declassification projects that – due to the CIA Information Act – would not have been accessible to the Archive through FOIA. The information in these records has significantly affected public understanding about the history of CIA policies and

(note 3, cont.) See also Central Intelligence Agency Information Act, H. Rep. No. 98-726, Part II, at 6 (1984) (“CIA Executive Director Charles A. Briggs [] testified that the bill will not result in the withholding of any information that is now made public.”); Notice of Operational File Exemptions, 59 Fed. Reg. 40,339, 40,340 (Aug. 8, 1994) (acknowledging legislative history stating that the CIA Information Act of 1984 “will improve the ability of the CIA to respond to FOIA requests from the public in a timely and efficient manner, while preserving undiminished the amount of information releasable to the public under the FOIA.”).

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operations in Latin America, U.S. intelligence relations with security services, and key human rights cases. In the case of Chile, operational records were released with no discernible damage to national security. These records are today being used as educational tools throughout the United States, and have contributed to advancing U.S. efforts at strengthening democracy and justice in Chile. Operational documents also have contributed to fostering international understanding of the history of terrorism in the Caribbean and the Southern Cone, which are relevant to U.S. efforts in the current war on terror.

Finally, the Archive has requested a number of records that were summarized and quoted in the Final Report of the 9/11 Commission, but were denied as operational records. In some cases the Archive is appealing these denials.⁴ Notably, however, there can be no doubt that the best selling 9/11 Commission Report documents matters of great public interest and historical value. Accordingly, the CIA should consider removing these items from the operational files designation so that records can be released as their sensitivity diminishes.

These examples demonstrate that the passage of time and changing circumstances in the world can affect the sensitivity of operational records even though the public interest in the records remains strong. These examples also show the viability of systematic declassification efforts for such files. By removing older records and records that the Archive and other commenters identify as historically valuable or of great public interest from the operational file designation, the CIA will facilitate a historical declassification effort that results in the release of comprehensive groups of records and that has a positive impact on the nation.

**Denied Records That Should Be Removed
From the Operational File Designation**

The Archive's experience suggests that there are materials being blocked from search and review that do not qualify under the statutory definition of operational files. For example, histories of the Directorate of Science and Technology, its components, or its activities have been designated part of the Directorate's operational files and thus exempt from search and review—even when those histories cover activities that have been the subject of substantial declassification.⁵ Two of the requested histories had been specifically cited and referenced in other CIA documents that have been declassified. These include, for example, a history of the Office of ELINT (electronic intelligence) from 1962-1966, and any histories of the Office of Research and Development. Much about these offices (which no longer exist) has already been declassified and the National Archives & Records Administration has a number of articles from the CIA's

⁴ For example, many of the documents were not created by the Directorate of Operations, Directorate for Science and Technology, or the Office of Personnel Security, and thus should reside in non-operational files. Many also appear to be intelligence records that are not considered operational files. See Freedom of Information Appeal Lodged With Agency Release Panel (January 13, 2005) (Archive No. 20041375CIA174/ CIA No. F-2005-00359).

⁵ The requests were for: "History of Office of Special Activities from Inception to 1969," DS&T Historical Series, OSA-1, (April 1, 1969) (Request No. F-1994-01452 (appeal denied July 16, 2002)); Elizabeth Fisher, "History of the Office of ELINT to December 1966" (1968) (Request No. F-1994-01561 (appeal denied July 16, 2002)); histories of the Directorate of Science and Technology (Request No. F-1996-01465 (appeal denied July 16, 2002)); and histories of the Office of Research and Development (Request No. F-1998-02484 (appeal denied July 16, 2002)).

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Studies in Intelligence that recount ELINT operations⁶ and concern the Office of Research and Development.⁷

The same is true of the history of the Office of Special Activities from its inception to 1969. Between 1962 and 1969 the Office of Special Activities was responsible for the CORONA satellite reconnaissance program, the U-2 program, and the OXCART (A-12) program. Substantial aspects of these programs have been released, including all 800,000 CORONA images, a history of the U-2 program written by CIA's history staff⁸, and *Studies in Intelligence* articles on the histories of CORONA and OXCART.⁹ Similarly, a significant amount of information already has been released about the Directorate of Science and Technology.¹⁰

These histories are highly likely to contain extensive information beyond documentation of "the means by which foreign intelligence or counterintelligence is collected through scientific and technical systems." Moreover, the Directorate of Science and Technology informed the public in 1994 that it "does not maintain its records in distinct files," that "documents of all types are interspersed throughout the DS&T's components," and that "DS&T searches all of its records in response to a FOIA request."¹¹ If this is true, then the search is being conducted whenever these records are requested and the real issue is review. As described above, it is extremely likely that the majority of these histories are not so sensitive that they should be protected from search and review under FOIA. Just as the CIA removed from the operational files designation the files of the defunct Office of Policy Coordination and the inactive National Committee for a Free Europe and Asia Foundation projects in 1994, it should now remove from the designation the files of the Office of ELINT, the Office of Research and Development and the Office of Special Activities. The Directorate of Science and Technology played a key role in the collection and analysis of intelligence during the 1960s and beyond. Thus the files of the Directorate and its components are of significant value to historical treatments of intelligence during the Cold War. The CIA has recognized the value of making such information available to the public and historians in its releases of document collections and its sponsorship of conferences.

Notably, historical material was a matter of particular concern to Congress, which specifically raised questions about the disclosure of historical operations with the CIA during hearings on the CIA

⁶E.g., William H. Nance, "Quality ELINT," *Studies in Intelligence* (Spring 1968); Gene Poteat, "Stealth, Countermeasures, and ELINT, 1960-1975," *Studies in Intelligence* (1998); Henry G. Plaster, "Snooping on Space Pictures," *Studies in Intelligence* (Fall 1964); Frank Elliot, "Moon Bounce ELINT," *Studies in Intelligence* (Spring 1967).

⁷E.g., "ORD Milestones," (Sept. 1966) (NARA 1998 CIA Release); Inspector General, CIA, "Inspector General's Survey of the Office of Research and Development (Oct. 1972.) (NARA 1998 CIA Release).

⁸E.g., Pedlow and Welsenbach, "The CIA and the U-2 Program, 1954-1974"; see also "Directorate of Science and Technology Decennial Review of Designated Files" (1995) (noting "DS&T now conducts FOIA searches and releases material on the research, development, and operations of U-2 and SR-71 reconnaissance aircraft, both of which were formerly in exempted files").

⁹E.g., Thomas P. McIninch, "The OXCART Story," *Studies in Intelligence* (Winter 1971).

¹⁰E.g., Donald E. Welzenbach, "Science & Technology: Origins of a Directorate," *Studies in Intelligence* (Summer 1986).

¹¹ See Archive Calls on CIA and Congress to Address Loophole Shielding CIA Records From Freedom of Information Act (October 15, 2004) (available at <http://www2.gwu.edu/~nsarchiv/NSAEBB/NSAEBB138/index.htm>) (reproducing statements provided at CIA meeting with members of the public on the occasion of the 1994 decennial review).

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Information Act of 1984. For example, when asked whether a special study on the Berlin Tunnel Operation – a historical study – would remain subject to release under the FOIA, the then-Director of the Office of Legislative Liaison of the Agency, Clair George, confirmed that such “special studies will not be in designated [operational] files, this type of material will continue to be accessible.”¹²

In addition, the CIA has declared histories of acknowledged covert activities exempt from search and review even though the CIA Information Act excludes from the definition of an operational file “any special activity the existence of which is not exempt from disclosure under the [FOIA].” 50 U.S.C. Sec. 431(b)(2). Yet the CIA has refused to search or review “Covert Action Operations: Soviet Russia Division, 1950-1968”, which is one of many histories the CIA allowed journalist Evan Thomas to examine while he was writing *The Very Best Men: Four Who Dared*, his 1995 book on Richard Bissell and other key CIA officials. Documents about acknowledged covert activities are not protected by the CIA Information Act and must be reviewed for release. Moreover, the fact that a researcher was provided access to the document is an indicator that the sensitivity of the record has diminished over time. The covert action operations against the Soviet Union between 1950 and 1968 that are discussed in the document are an important part of the historical record of U.S. relations with the Soviet Union. Hence, any account of the U.S.-Soviet conflict is incomplete without a discussion of those operations.

In fact, from 1991-1998, the CIA actually committed to declassification of 11 CIA covert operations, including the 1948 Italian and French elections, the 1953 Iranian coup, the 1954 Guatemalan coup, the 1958 Indonesian coup, the 1962 Cuban missile crisis, support to Tibetan guerrillas in the 1950s-60s, operations against North Korea during the Korean War and operations in Laos in the 1960s, and operations in the Dominican Republic and the Congo. These publicly acknowledged special activities are not protected by the operational file exemption and are of tremendous interest to the public, both for the myth and reality of CIA involvement. The CIA has an opportunity as it reviews its FOIA and declassification policies during this decennial review to live up to the commitment made by three successive Directors of Central Intelligence¹³, and then broken.¹⁴ Systematic declassification projects

¹² Legislation to Modify the Application of the Freedom of Information Act to the Central Intelligence Agency. Hearings before the Subcommittee on Legislation of the Permanent Select Committee on Intelligence, House of Representatives, 98th Cong., 2d Sess., at 121 (1984).

¹³ See Recommendation of the CIA's Task Force on Openness, 1991 (DCI Gates accepted this recommendation in January 1992, promising “a bias toward declassification” of these documents) (“Initiate in the near-term the declassification of specific events, particularly those which are repeatedly the subject of false allegations, such as the 1948 Italian Elections, the 1953 Iranian Coup, 1954 Guatemalan Coup, 1958 Indonesian Coup and the Cuban Missile Crises in 1962 [and n]otify the public of the availability of the resulting materials.”); Testimony of DCI R. James Woolsey to Congress (Sept. 28, 1993) (“I have also directed review for declassification of significant Cold War covert actions more than 30 years old. These include the following: activities in support of democracy in France and Italy in the 1940s and 1950s; support to anti-Sukarno rebels in Indonesia in 1958; support to Tibetan guerrillas in the 1950s and early 1960s; operations against North Korea during the Korean War; and, operations in Laos in the 1960s. In reviewing these actions for declassification, we are building on the steps my predecessors took in announcing plans to declassify records on the Bay of Pigs operation, the coups against President Arbenz of Guatemala and against Prime Minister Mossadeq in Iran, and operations in the Dominican Republic and the Congo.”); Letter to the Editor from DCI John Deutch, New York Times, Page A30, May 3, 1996 (“We have doubled the resources devoted to the agency's declassification of historically valuable records [W]e have also promised to review records of 11 covert actions of the cold war era.”).

¹⁴ See July 15, 1998 Statement of DCI George Tenet (“[W]e continue to face the dilemma of where to apply our available resources. [In addition to the Bay of Pigs and Guatemala, w]e also will initiate declassification reviews, as soon as resources are available, of the materials involved in the covert actions undertaken during the Korean War, and in the Congo, Laos, and

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related to these actions would provide historians with a treasure trove of information that is historically valuable and would serve the public interest.¹⁵

As you know, the CIA Information Act provides the CIA Director with the option of excluding categories of information from the operational files exception. These materials merit the exercise of the Director's authority to permit release because Congress intended the public to continue to have access to historical records of CIA activities and operations.¹⁶

**Removal of Records Older Than 40 Years
from "Operational Files" Designation**

Information that can harm the national security must certainly be protected. Indeed, we have an extensive system designed to protect such information, including a classification system, security clearance procedures, and careful FOIA officers who guard against disclosure of sensitive information. The CIA Information Act also is one of the components of this elaborate protective framework.

Experience shows that information requiring absolute secrecy at the time of its origin can be opened to the public after the passage of time without any harm to national security. This was recognized by Congress when it specifically required the decennial review to "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." 50 U.S.C. Sec. 432. The two most recent U.S. presidents enshrined this concept in the automatic declassification provisions of Executive Order 12958 (President Clinton) and Executive Order 13292 (President Bush), which require declassification when a document reaches the age of 25 years.

The diminished sensitivity of historical information also was recognized by the CIA's own history staff, which is comprised of individuals who have security clearances, who have had access to operational files

Dominican Republic during the 1960s. ... We will address the remaining five covert actions identified by my predecessors as soon as the others have been completed. The fact is, we do not have sufficient resources at the current time to review the documentation involved in these five remaining covert actions.... I have opted, therefore, to hold the reviews of these covert actions in abeyance for the time being.").

¹⁵ In opening up older files, the CIA should always ensure that chronological groupings of records are treated the same. As the National Archives and Records Administration ("NARA") recognized when NARA conducted its evaluation of records management in the CIA, researchers need "access to coherent blocks of organized records, not artificially-created collections." To learn from our past we need information that is both accurate and as comprehensive as possible. The selective release of individual records from a variety of different files, or releases that do not provide sufficient context, interferes with the development of historically important information.

¹⁶ Legislation to modify the Application of the Freedom of Information Act to the Central Intelligence Agency: Hearing before the Subcommittee on Legislation of the Permanent Select Committee on Intelligence, House of Representatives, 98th Cong., 2d Sess., 19 (1984) (statement of then-Deputy Director of CIA Office of Legislative Liaison Ernest Mayerfield in response to a question about CIA plans to review files of interest to historians: "[The DCI] can, if a case is made, ... or if he determines that a certain file ... is of such interest to historians or to other groups, ... redesignate a category of files or a portion of a category of files to permit access under the FOIA"); Intelligence Information Act of 1983, S. Rep. No. 305, 98th Cong. 1st Sess., at 18 (1983) ("The CIA assured the committee that 'the designation process will be a dynamic one, in which recommendations for the removal of files from designated status will be made to the DCI whenever such a lifting of the designation is appropriate either because of the passage of time or for some other reason.'").

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Of Operational File Designations
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and who have the Agency's best interest at heart. During the 1994 decennial review, CIA history staff recommended that the CIA remove operational files designations from all records older than 40 years. The CIA rejected this in light of the advent of automatic declassification for records older than 25 years, explaining that the CIA history staff's recommendation was "unnecessary and impractical." Yet, there is no real logic to this determination, as the CIA has the ability to obtain an exception from automatic declassification for its operational files. So, a decision by the Agency to make all records older than 40 years (i.e. records from 1947-1965) subject to search and review under FOIA would be a significant advance in the CIA's accessibility.

Thus, the Archive urges the CIA to open up for FOIA requests operational files that contain documentation from a period 40 or more years ago. While there may still be materials in these files that are sensitive, it is likely that the vast majority of the materials will no longer be sensitive and that search and review of the files will be productive. In addition, by opening up these files for review, the CIA may find that it encounters non-operational documents included in operational files under now-obsolete filing systems, thereby restoring to FOIA access documents that never should have been protected.

Conclusion

An informed citizenry is one of our nation's highest ideals. Thus, much of our public policy is predicated on the idea that competition in the marketplace for ideas should be fair and unfettered. To this end, we support a free press, a diverse scholarly community, and an inquiring citizenry – all dedicated to ferreting out and publishing facts. The Freedom of Information Act is a critical component in this effort to permit public access to facts – facts about government. In a world in which war and terrorism are commonplace, an essential component of national security is an informed citizenry that, as a result of its education about issues, believes in and strongly supports its government. This is glaringly apparent at a time when American soldiers are being called on to risk their lives to protect national security and democratic ideals, when the public is held in a balance of terror, and when our resources are committed to establishing and maintaining our defense.

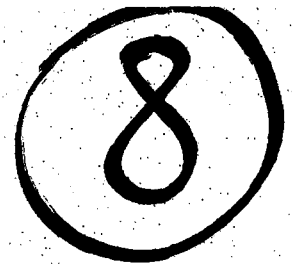
We are hopeful that this decennial review will result in the removal of a substantial body of records currently categorized as "operational files" exempt from search and review under FOIA. We urge the Agency to consider current realities, including the substantial changes in the world since the last decennial review, as it makes decisions about the public's interest in understanding the activities of the CIA and how those activities relate to U.S. foreign policy. Responding to requests under the Freedom of Information Act is the one direct obligation that the CIA has to the American public. The Agency will gain and retain the support of the American public by being as open as security will permit.

Thank you for considering our comments on the decennial review of the operational file designations. If you have any questions or we can provide any additional information, please do not hesitate to contact Meredith Fuchs or Thomas Blanton (202-994-7000).

Sincerely,

Thomas Blanton
Director

Meredith Fuchs
General Counsel



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January 20, 2005

Mr. Edmund Cohen
Director of Information
Management Services
Central Intelligence Agency
Washington, D.C. 20505

VIA FACSIMILE

Dear Mr. Cohen:

I write in response to the CIA's "Notice of Decennial Review of Operational Files," which solicits public comments.

Your decennial review takes place at a time when the United States is pushing to democratize other countries, most notably in Iraq. It seems evident from his inaugural address today that President George W. Bush intends to pursue this policy on a global basis. It is not clear, however, where and how this policy will be implemented. Will the means include covert actions against countries we do not think are democratic? Will it include covert actions against countries whose form of democracy we do not like?

I raise these questions because I think that your still secret files can shed enormous light on (1) the credibility which other nations are likely to attach to such a campaign in light of our past history, and (2) the benefits and liabilities of such covert actions.

I note, preliminarily, that soon after its inception the CIA began overthrowing democratically-elected governments in such countries as Iraq, Guatemala, Greece, and Chile. It also has plotted to assassinate foreign leaders in other countries. All operational records which pertain in any way to these events must be preserved and made accessible to the public under the Freedom of Information Act, the President John F. Kennedy Assassination Records Collection Act of 1992, and the Agency's inherent authority to disclose information when the public interest requires it.

Whenever a secret governmental organization acquires the power to overthrow other governments, there always lurks the horrendous possibility that it will ultimately use that power against a leader of its own government it does not like. The possibility of this is increases where those who have been involved in overthrowing other governments draw no distinction between overthrowing a government which is democratically elected and one that is not.

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In the late 1970s Congress conducted an investigation of the assassination of President Kennedy which focused, in part, on the issue of whether certain CIA officers may have been involved in some way in the President's murder. It is now known that the CIA deliberately sought to obstruct the congressional inquiry into the Directorio Revolucionario ('DRE'), a CIA-funded militantly anti-Castro Cuban exile group and its embroilment with Lee Harvey Oswald, the alleged assassin of President Kennedy. To do this, the CIA called out of retirement George Joannides, who had served as the CIA's case officer for DRE in the months preceding JFK's murder. Neither he nor the CIA informed the House Select Committee on Assassinations that he had been in control of the DRE. He also failed to provide the information regarding the DRE which the HSCA had requested.

This disclosure that the CIA corrupted a congressional investigation into a matter of utmost national security significance, the murder of a president, is deeply troubling. I do not see how the CIA can ever have public confidence on any national security issue if it will not cooperated with a duly constituted congressional committee investigating the murder of a president.

The CIA is still withholding information on Mr. Joannides that should have been made available to Congress and the Assassination Records Review Board. In response to a Freedom of Information Act request and lawsuit, it has refused to search for operational records on Joannides, even though it is required to do so under the terms of the CIA Information Act of 1984 and the JFK Act. I therefore ask that pursuant to your decennial review you make accessible all operational records pertaining in any way to George Joannides or the DRE.

To a very considerable extent, the focus of serious investigators and researchers into the assassination of President Kennedy has been on a group of CIA officers who were involved in covert action operations in Guatemala, Cuba and Chile. In view of this, I request that all operational records pertaining to any of these subjects be made accessible to the public. This should include all records on persons who have figured in one way or another in those operations, such as David Atlee Phillips, E. Howard Hunt, John Martino, William Harvey, Win Scott, David Morales, Harold (Hal) Hendrix, Frank Sturgis (Frank Fiorini), Ted Shackley, and others. It should also include all records on prominent Cuban exile organizations such as Alpha 66, the Cuban Revolutionary Council, or any other anti-Castro organization with which the CIA had any relationship.

Finally, all operational records regarding any assassination attempts prior to 1974 should also be made accessible to the public.

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Sincerely yours,

[Redacted Signature]

James

James H. Lesar

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January 25, 2005

Via Facsimile

Edmund Cohen

Director of Information Management Services
Central Intelligence Agency
Washington, DC 20505

RE: Availability of Comments on CIA Decennial Review of Operational File Designations

Dear Mr. Cohen:

As you know, the National Security Archive filed comments last week on the Central Intelligence Agency's decennial review of the record categories designated as operational files exempt from search and review under the Freedom of Information Act. I understand that the CIA maintains its information technology systems apart from the Internet and perhaps that is why the CIA does not participate in the electronic docketing systems now used by most federal agencies, such as Regulations.gov. Nonetheless, proceedings such as the CIA's decennial review are of significant public interest.

I am writing, therefore, to request that the CIA consider methods of making the decennial review docket publicly available, perhaps by reproducing the federal register notice, public comments and related materials on the CIA's publicly accessible web site. Such an effort would demonstrate the CIA's desire to maintain a transparent process in an area that Congress recognized is of public concern. If the CIA does not wish to post the docket on its own web site, the Archive would be willing to post the Federal Register notice and the comments on its own web site for the convenience of the public.

I look forward to your response to this request. I would be happy to discuss this further with a representative of the Agency, and can be reached at 202-994-7000.

Sincerely,

Meredith Fuchs
General Counsel

An Independent non-governmental research institute and library located at the George Washington University, the Archive collects and publishes declassified documents obtained through the Freedom of Information Act. Publication royalties and tax deductible contributions through The National Security Archive Fund, Inc. underwrite the Archive's Budget.