



NATIONAL SECURITY AGENCY
CENTRAL SECURITY SERVICE
FORT GEORGE G. MEADE, MARYLAND 20755

Serial: N 9136

10 MAY 1977

Mr. Harold Weisberg
Route 12 - Old Receiver Road
Frederick, MD 21701

Dear Mr. Weisberg:

This replies to your letter of 11 April 1977 appealing the denial by the National Security Agency (NSA) Information Officer of certain records and portions of other records which fall within the scope of your 7 March 1977 request.

This Agency attributes no meanings to words of the Freedom of Information Act other than their literal definitions. There has been no attempt to withhold records or portions thereof which are not properly exempted under the Act, and we have made every effort to comply with both the spirit and the letter of the Act. No improprieties were involved in processing your request. Officials of government agencies which serve the American people are required by statute and by Executive Order to protect information the compromise of which would cause damage to the national security interests of the United States.

I have reviewed the NSA documents and portions thereof which have been denied to you. I have also reviewed the NSA Information Officer's denial to you of this information and your letter of appeal of this denial. Further, I have reviewed this matter as it pertains to the current classification assigned to certain of these records or portions thereof.

Based on these examinations, I have concluded that the information, denied to you in paragraphs 3a, b, and 4 of the NSA Information Officer's 23 March 1977 letter to you, which was obtained in the course of a lawful foreign intelligence operation, meets the criteria for classification in Section 1 of of Executive Order 11652, and paragraph 2-303 of Department of Defense (DoD) Regulation 5200.1-R; that it is properly classified in its entirety within the categories provided in Chapter 1, Section 5 of DoD Regulation 5200.1-R and Section 1 of Executive Order 11652; and that it is properly excluded from automatic downgrading and declassification according to the exemption categories provided in Chapter 3, Section 3

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of DoD Regulation 5200.1-R and Section 5(B) of Executive Order 11652. Thus, I find that the NSA Information Officer properly found this information to be exempt from release pursuant to Title 5 U.S.C. 552(b)(1), and I affirm his denial of your request for release of this information on these grounds.

You argue that "The Congress does not enact laws for those who do not like these laws to misinterpret or rewrite because they are not liked." The legislative history of the Freedom of Information Act Amendments of 1974 (Public Law 93-502) specifies that 50 U.S.C. 403 and 18 U.S.C. 798 are statutes within the meaning of 5 U.S.C. 552(b)(3). The Conference Report specifically noted the special protections:

"Restricted Data (42 U.S.C. 2162), communication information (18 U.S.C. 798), and intelligence sources and methods (50 U.S.C. 403(d)(3) and (g)), for example may be classified and exempted under section 552(b)(3) of the Freedom of Information Act. When such information is subjected to court review, the court should recognize that if such information is classified pursuant to one of the above statutes, it shall be exempt under this law." (S.Rep. No. 93-1200, 93rd Congress, 2nd Sess., 12 (1974).

The NSA is precluded by 18 U.S.C. 798 from providing classified communications intelligence or information concerning classified communications intelligence activities to anyone except those persons authorized in accordance with 18 U.S.C. 798 to receive such information. I find, after considering your contentions, that the NSA Information Officer properly concluded that the records are covered by 18 U.S.C. 798 and are exempt from disclosure pursuant to 5 U.S.C. 552(b)(3).

Further, the records in question are fully covered by the authority of the Director of Central Intelligence under 50 U.S.C. 403(d)(3), since classification of the material is related to the intelligence sources and methods involved, and no portions can be segregated without possible compromise. Thus, I also find that the NSA Information Officer properly exempted the records in their entirety under 5 U.S.C. 552(b)(3) pursuant to 50 U.S.C. 403(d)(3).

Apart from considerations of classification, Section 6 of Public Law 86-36 bears on the matter of release of information relating to NSA; it provides, with one exception not relevant here, that no law shall be construed to require disclosure of

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the organization or any function of the National Security Agency, or any information with respect to the activities thereof. As each of the reports in question would disclose information concerning the organization, functions and activities of NSA, they are clearly covered by Section 6 of Public Law 86-36. This is consistent with 5 U.S.C. 552, as it was precisely 5 U.S.C. 552 and other portions of the U.S. Code requiring release of information which the Congress had in mind when enacting Section 6 of Public Law 86-36. Thus, I find adequate grounds upon which to exempt these items in these records pursuant to 5 U.S.C. 552(b)(3), by virtue of Section 6 of Public Law 86-36 and I find that the NSA Information Officer properly exempted them pursuant to Title 5 U.S.C. 552(b)(3).

With respect to the items denied to you by the NSA Information Officer in paragraph 5 of his letter, in addition to the reasons I have given in the preceding paragraph for withholding these items, it should be noted that Congress, in enacting Section 6 of Public Law 86-36, recognized the unique and sensitive nature of the information and the activities of the NSA. It did this by exempting from the disclosure requirements of any law all such information. NSA does not exercise this exemption in an arbitrary manner; rather, it exercises the exemption only where it appears necessary to protect information. Thus, I find adequate grounds upon which to exempt these items in their entirety pursuant to Title 5 U.S.C. 552(b)(3) by virtue of Section 6 of Public Law 86-36, and I find that the NSA Information Officer properly exempted them pursuant to Title 5 U.S.C. 552(b)(3).

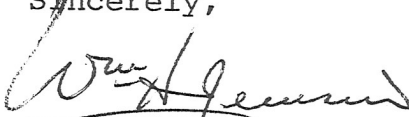
In summary, I find the items covered by your request are properly and completely within the statutory protections and exemptions cited above; the Information Officer has identified the appropriate information as required by 5 U.S.C. 552 and applicable directives; and that proper protection of classified information and intelligence sources and methods requires a denial of your appeal.

As your appeal is denied in its entirety, you are hereby advised of your rights under 5 U.S.C. 552 as amended by Public Law 93-502 to obtain judicial relief. You may seek an order from a United States District Court in the district in which you reside, in which you have your principal place of business, or in which this Agency's records are situated (U.S. District Court, District of Maryland), or in the District of Columbia, for the production of any Agency records which you consider to have been improperly withheld by this Agency.

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Section 2 of Public Law 93-502 sets out your rights in this matter with respect to such judicial action.

Sincerely,



WILLIAM H. JENKINS
Freedom of Information
Appeal Authority