

U.S. GOVERNMENT INFORMATION POLICIES AND
PRACTICES—SECURITY CLASSIFICATION PROBLEMS
INVOLVING SUBSECTION (b) (1) OF THE FREEDOM
OF INFORMATION ACT
(PART 7)

HEARINGS
BEFORE A
SUBCOMMITTEE OF THE
COMMITTEE ON
GOVERNMENT OPERATIONS
HOUSE OF REPRESENTATIVES
NINETY-SECOND CONGRESS
SECOND SESSION

MAY 1, 2, 3, 5, 8, AND 11, 1972

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Mr. MOORHEAD. Did you make suggestions for revisions in the Executive order?

Dr. RHOADS. We did.

Mr. MOORHEAD. Were those suggested revisions accepted?

Dr. RHOADS. They were.

Mr. MOORHEAD. Has the National Archives received requests for information under the Freedom of Information Act?

Dr. RHOADS. Yes; we received requests for information under the Freedom of Information Act with some frequency. Normally we refer those requests that come to us to the originating agencies because in every instance the restrictions that have been placed on access to materials are those placed by the agencies, which we by law are obliged to respect.

Mr. MOORHEAD. Do you have any idea how many such requests you have received since the effective date of the act?

Dr. RHOADS. No, I don't know how many there have been. If you wish we can supply that for the record.

Mr. MOORHEAD. I wish you would.

And while you are doing that, if you could tell us the disposition of the requests, how many were approved, how many denied, how many referred to agencies and ultimately whether the requester got the information that he was seeking.

Dr. RHOADS. Mr. Chairman, this would be difficult to do because I think in every instance they have been referred to the agency that placed the restriction on the records and the agency made disposition of the cases. I think we would not know in most instances what the outcome was.

Mr. MOORHEAD. In every instance you referred it to an agency?

Dr. RHOADS. I believe so.

Dr. O'NEILL. Mr. Chairman.

Mr. MOORHEAD. You understand what we are looking for is to see how the Freedom of Information Act operates.

Dr. RHOADS. Certainly.

Mr. MOORHEAD. Whatever figures you could give us that would be helpful to this subcommittee we would appreciate.

I think Mr. O'Neill wanted to comment.

Dr. O'NEILL. I was going to say I think the figures would appear in the figures your committee has already obtained from the various agencies. Some of those appeals on which the agencies have presented you with statistics would have been appeals for material in the National Archives. Any that would be simply National Archives would appear in the statistics provided to your committee by the General Services Administration in answer to your questionnaire.

Mr. MOORHEAD. Yes. You understand. Dr. O'Neill, we are also trying to see how many times researchers go to the Archives and are turned down. It may be, for example, that we should change the law so that the Archives would defer to the originating agency. Perhaps that procedure just slows down a bona fide researcher; if there have been numerous referrals or numerous refusals, then we would look into the procedures.

That is the reason for my request.

Mr. PHILLIPS. Dr. Rhoads, haven't there been some direct requests to the Archives from the Committee to Investigate Assassinations that

involved records and materials in connection with the Warren Commission investigation of President Kennedy's assassination?

Dr. RHOADS. Mr. Phillips, there have been some inquiries.

Mr. PHILLIPS. Under the Freedom of Information Act?

Dr. RHOADS. Yes; and it may be that I erred in my statement to the chairman. There have been some of those that were lodged under the Freedom of Information Act. Some of those, of course, would still, I believe go back to the agencies of origin because a large part of the files of the Warren Commission consist of materials that the Commission received from various agencies of the Federal Government. And we have been following the guidelines established by those agencies in permitting access. But we will certainly look into that matter in furnishing the information we were just discussing.

Mr. PHILLIPS. Also it would be helpful to have in the record a statement by Dr. Rhoads which would summarize the status of records, documents, materials, and so forth, that are in the custody of the Archives in connection with the Warren Commission investigation. We have had considerable amount of mail over the years on this subject. I think there is a great deal of interest among some historians and scholars as to what the status of the various materials are. I know there are donor restrictions. A clarifying statement that we could put in the record from the Archives on this subject would serve a useful purpose.

Dr. RHOADS. We will be glad to furnish that.

(The statement follows:)

THE WARREN COMMISSION RECORDS AND THE FREEDOM OF INFORMATION ACT

The records of the President's Commission on the Assassination of President Kennedy (the Warren Commission) are administered under guidelines prepared by the Department of Justice in 1965 (copy attached) which provide for periodical reviews of the Commission's records in order to make as many of them as possible available for research. Any records withheld from research under the guidelines, of course, must belong to one or more of the types exempted from disclosure by the terms of the "Freedom of Information Act" (5 U.S.C. 552, subsections (b) (1)-(b) (9)). The reviews of the records provided for in the guidelines were held in 1965, 1967, and 1970. A large number of documents withheld from research as a result of the 1965 review were made available by the 1970 review. The 5-year review of the records withheld from research as a result of the 1967 review is now being conducted. This review includes a survey of the security classified documents among the Commission's records to determine whether they should be declassified or downgraded under the provisions of Executive Order 11652 (37 F.R. 5209), which goes into effect on June 1, 1972.

About 20 percent of the records of the Commission is withheld from research. These records are of the following types: (1) records exempted from disclosure by specific statutes, such as income tax returns; (2) security classified records specifically required by Executive order to be kept secret in the interest of the national defense or foreign policy; (3) records that are part of investigatory files compiled for law enforcement purposes or that are interagency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency, the disclosure of which (a) would be detrimental to law enforcement, (b) might reveal confidential sources of information, or (c) would be a source of embarrassment to innocent persons; and (4) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

National Archives reference correspondence files concerning the records of the Commission contain denials of 326 requests for documents or parts of documents by 25 researchers under the exemptions in the Freedom of Information Act since the act went into effect on July 4, 1967. Some of the documents involved were later made available to the researchers by the 1970 review. Two researchers have appealed denials of requests by the National Archives for 15 documents

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or parts of documents to the General Services Administration. The appeals concerning 11 documents or parts of documents have been denied; the appeal concerning one document has been granted; the appeal concerning one document is still under consideration; and the appellant has been referred to the agencies that furnished documents to the Commission in regard to two documents.

The photographs and X-rays made during the autopsy of President Kennedy, which are not part of the records of the Warren Commission, were given to the General Services Administration (of which the National Archives is a part) by the Kennedy family pursuant to the provisions of 44 U.S.C. 397(e) (1) by an agreement dated October 20, 1966, which limits access to these materials (1) to persons authorized to act for a Committee of Congress, a Presidential Commission, or any other official agency of the Federal Government having authority to investigate matters relating to the assassination of President Kennedy and (2) to recognized experts in the field of pathology or related areas of science or technology whose applications are approved by the Kennedy family representative after a period of 5 years from the date of the agreement had elapsed.

Requests for access to the autopsy materials by a researcher after the effective date of the Freedom of Information Act were denied by the National Archives, referring to the terms of the agreement. His appeal citing the act was denied by the General Services Administration. His suit for access to the material was denied by the United States District Court for the District of Kansas. His appeal has been denied by the United States Court of Appeals for the Tenth Circuit.

Since the expiration of the 5-year period mentioned in the agreement with the Kennedy family, five applications to examine the autopsy material have been received by the National Archives and referred to the Kennedy family representative. One application was approved by the Kennedy family representative, and the other four are still pending.

The above statistics concerning denials and appeals do not include denials of requests for copies of copyrighted materials and for copies of photographs of President Kennedy's clothing taken by the National Archives. The copyrighted materials and the photographs are available for inspection by researchers in the National Archives. The photographs of the clothing are shown to researchers in place of the clothing, and copies are not furnished in order to avoid any possible violation of the agreement with the Kennedy family, by which the clothing also was given to the General Services Administration.

GUIDELINES FOR REVIEW OF MATERIALS SUBMITTED TO THE PRESIDENT'S COMMISSION ON THE ASSASSINATION OF PRESIDENT KENNEDY

1. Statutory requirements prohibiting disclosure should be observed.
2. Security classifications should be respected, but the agency responsible for the classification should carefully reevaluate the contents of each classified document and determine whether the classification can, consistent with the national security, be eliminated or downgraded.
3. Unclassified material which has not already been disclosed in another form should be made available to the public on a regular basis unless disclosure—
 - (A) Would be detrimental to the administration and enforcement of the laws and regulations of the United States and its agencies;
 - (B) Might reveal the identity of confidential sources of information and impede or jeopardize future investigations by precluding or limiting the use of the same or similar sources hereafter;
 - (C) Would be a source of embarrassment to innocent persons, who are the subject, source, or apparent source of the material in question, because it contains gossip and rumor or details of a personal nature having no significant connection with the assassination of the President.

Whenever one of the above reasons for nondisclosure may apply, your department should, in determining whether or not to authorize disclosure, weigh that reason against the overriding policy of the executive branch favoring the fullest possible disclosure.

Unless sooner released to the public, classified and unclassified material which is not now made available to the public shall, as a minimum, be reviewed by the agency concerned 5 years and 10 years after the initial examination has been completed. The criteria applied in the initial examination, outlined above, should be applied to determine whether changed circumstances will permit further disclosure. Similar reviews should be undertaken at 10-year intervals until all materials are opened for legitimate research purposes. The Archivist of the

United States will arrange for such review at the appropriate time. Whenever possible provision should be made for the automatic declassification of classified material which cannot be declassified at this time.

Mr. MOORHEAD. Dr. Rhoads, under the new Executive order, as you say in your testimony, you will have the authority for the first time to declassify classified documents.

Dr. RHOADS. Yes.

Mr. MOORHEAD. What is the training or expertise of the employees of the Archives who will do the declassification?

Dr. RHOADS. We will have a number of persons on the staff, Mr. Chairman, professionally qualified archivists, persons with advanced academic degrees and long years of familiarity with the records, who will be heading this massive declassification project and giving guidance to it. But we will have to hire—this is assuming that our hearings before the Appropriations Committee later this week bear fruit—we will have to hire a substantial number of additional persons who will be trained by present members of our staff, both in the implications of the new Executive order and the mechanism that must be used to declassify the material and to interpret the guidelines. This is the most important part of it: to interpret properly but liberally the guidelines that are supplied to us by the agencies.

Mr. MOORHEAD. Is your testimony that a trained archivist, that experience is sufficient to pass judgments on classification or declassification?

Dr. RHOADS. Mr. Chairman, a trained archivist who has had experience in interpreting agency guidelines for the declassification of such materials, I believe, is fully qualified to do this work.

Mr. MOORHEAD. Well, we have heard testimony that, for example, our intelligence operations may have to be kept secret for a longer time than the ordinary man would comprehend. Would you need to have experts in the field of intelligence gathering?

Dr. RHOADS. I would like to pass that question, if I may, to Dr. O'Neill who has been working very closely with intelligence experts that the Department of Defense has had in the National Archives for many months. I think perhaps he can be more responsive to that than I can.

Dr. O'NEILL. We, of course, and our staff are not intelligence experts. We operate with the guidance provided by the intelligence community. The more refined they can make those guidelines the better our people will be able to separate out the kind of material that the intelligence community will wish themselves to see and on which they will pass the ultimate decision.

We have had, as Dr. Rhoads indicated, a team of Army intelligence reserve officers (better than 150 of them have passed through the reserves in the last year) working on army intelligence files. That is one of the pilot projects to which Dr. Rhoads's statement alluded. They have been able to declassify some 95 percent of the material in those files, and of the remaining 5 percent a good 4 percent they can't declassify because it isn't theirs, because it originated with some other part of the intelligence community or some foreign government such as Great Britain. We ourselves, however, will be making the kind of initial sifting of that kind of material and then passing the material which probably the intelligence officers will wish to see and

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