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SECRECY & GOVERNMENT BULLETIN

To Challenge Excessive Government Secrecy and
To Promote Public Oversight and Free Exchange
In Science, Technology, Defense, and Intelligence

Issue No. 37
July 1994
ISSN 1061-0340

DOE Hears Calls for Openness Loud and Clear

Energy Secretary Hazel O'Leary accelerated the remarkable transformation of her agency with a June 27 press conference on openness and declassification. Hundreds of pages of fact sheets documenting 119 new declassification decisions were released in an impressive sequel to her first openness press conference last December 7.

"We have been listening," O'Leary said, "and what we've heard loud and clear is that openness in government is very important to our citizens."

Newly disclosed information included descriptions of the quantities and locations of the unexpectedly large U.S. stockpile of highly enriched uranium, new data on nuclear weapons tests, and selected information on the size (up to 1961) of the nuclear weapons stockpile along with annual "megatonnage" and other characteristics, and additional information on human radiation experiments.

Even more important than any of the newly declassified facts and figures, however, was the Secretary's extraordinary invitation to the public to participate in the formulation of DOE classification policy, an unprecedented development in a national security bureaucracy that is otherwise indifferent or hostile to public input.

"We want to bring the public into the decision making process," said A. Bryan Siebert, director of the DOE Office of Declassification, at the June 27 press conference. DOE released a draft document describing DOE classification policy and identifying the types of information DOE classifies. Public comment was solicited on items that should or should not be classified. Likewise, guidelines for implementing the controversial system of Unclassified Controlled Nuclear Information were released for comment. And DOE released a 112 page study outlining the history of declassification since 1946 and describing exactly what has been declassified and when. Within the limits of law and other constraints, Siebert said, "We want people to tell us what they think should be classified and declassified."

This is a momentous shift in attitude, especially when compared with the adversarial stance toward the public that is habitually adopted by the intelligence community and other national security agencies on classification issues.

The latest DOE action elicited fierce opposition from other government agencies. The Defense Department blocked disclosure of the total size of the current nuclear arsenal along with other isolated facts. More seriously, some officials challenged the entire DOE openness initiative, perhaps fearing that it would raise expectations for them to follow suit.

Secretary O'Leary preempted any questions about the interagency conflicts with the questionable

assertion that "my colleagues in the national security community all want the same thing that I do." She frequently invoked President Clinton's rhetorical commitment to openness and generally made it clear that she is a team player. The problem is that she seems to be the only one on the team who is playing. Thus, in the last year or so DOE has issued about as many declassification decisions as it did altogether in its previous 50 year history. But that doesn't alter the fact that overall government classification activity increased during the last year while declassification dropped precipitously.

White House Chokes on WWII Documents

In contrast to DOE, White House declassification policy is stalled by a lack of leadership and a desperate desire for consensus. The Administration's paralysis is now holding up the declassification of some of the oldest and least sensitive documents imaginable, including 28 million pages of classified World War II records and tens of thousands of additional pages dating back to World War I.

The White House had originally circulated a proposal to declassify 48 million pages of documents in bulk, mostly from the World War II era, in time for the D-Day commemoration. But executive branch agencies were apparently concerned that national security could be threatened if the Wehrmacht struck again and the National Security Council yielded to their objections.

A June 28 meeting at the NSC failed to resolve the declassification issue, which has a significance far beyond the value of the documents themselves. The unwillingness or inability to release fifty year old records raises troubling questions about judgment and competence at the NSC, and dims the prospects for the urgently needed bulk declassification of more recent documents. Even some of the agency officials who had objected to declassification of the records were amazed at what they called NSC's "spinelessness."

"Anthony Lake is not what you would call an activist national security adviser," said one official. As a result, executive branch agencies have a clear field to manipulate policy as they see fit. When it comes to classification policy, no one is effectively in charge and, said another official, "It's become kind of dirty."

Mystery Programs Thrive at DOE

While the Department of Energy generally is at the forefront of secrecy reform, the special access programs conducted by the Department are an exception to its otherwise admirable transformation.

Special access programs (SAPs) employ a variety of security measures that are far more restrictive than those used in "ordinary" classified programs and

that largely shield them from independent oversight. After more than a decade of controversy and purported reforms, the special access system government-wide still remains secure against the threat of effective oversight.

Lately both the House and Senate Armed Services Committees have criticized the Department of Energy for failing to submit a report describing its highly classified SAPs. The House Defense Authorization bill for FY 1995 would prohibit the obligation of any funds for such programs until the DOE report, which was due February 1, is submitted.

The Senate Armed Services Committee said it "is concerned that the failure to provide full and complete budget justifications for all classified programs... severely limits the committee's ability to conduct meaningful oversight and to fulfill its responsibilities. In some instances, the Department has been reluctant even to acknowledge the existence of these programs." (S.Rep. 103-282, pp. 271-272).

This is of course an old familiar story. But there is more to it than that. In many cases, DOE officials apparently don't even know what secret programs are being conducted within their own agency and they have no reliable indication of what they may cost.

Thus, according to an October 1993 DOE Inspector General (IG) Report, "DOE is not necessarily aware of what SAPs are being worked on in DOE facilities.... We found this condition to be true at DOE Headquarters, a DOE operations office, and a national laboratory." (Report No. DOE/IG-0335, *Inspection of Selected Intelligence and Special Access Program Work-for-Others Projects*, p. 54).

Moreover, the definition of what constitutes a SAP is not exactly rigorous. "At [one] national laboratory," the DOE IG reported, "a security official told us there were what the official characterized as 'big SAPs' and 'little SAPs.' The official stated a 'big SAP' was a formal SAP with the security requirements imposed by the customer. The official stated a 'little SAP' was not a formal SAP [and therefore not subject to SAP oversight and reporting requirements].... This official estimated that there were seven intelligence-related 'little SAPs' at that location."

The Inspector General also found that cost accounting for SAPs and other classified programs was often wildly inaccurate, if not deliberately fraudulent. For example, some program costs were charged to overhead and paid for parasitically by other accounts. Several classified programs reviewed by the IG falsely reported a total estimated program cost of zero dollars. One program even claimed that its total program cost was equal to a negative number!

Among its 46 recommendations, the IG suggested that DOE "establish a policy that designated officials at each DOE operations office must be aware of all SAP activity at facilities under their cognizance." All 46 recommendations have been accepted by DOE and have been assigned "target completion dates," said John Keliher, the director of DOE's office of Nonproliferation and National Security.

Intelligence Budget Follies

The government cannot acknowledge the size of the total intelligence budget, so the argument goes, because then there would be pressure to disclose the size of each individual agency's intelligence budget. Soon citizens would demand a voice in determining intelligence policy and priorities. Then they would want access to some of intelligence products they pay for. The next thing you know, we would all be dining on borscht and vodka.

This argument is substantially weakened by the fact that the Department of Energy already publishes the size of its own intelligence budget-- without evident damage to national security or anything else. (Likewise, the State Department budget for its Bureau of

Intelligence and Research is unclassified.)

The DOE intelligence budget request for fiscal year 1995 is \$43.1 million. The congressional appropriations committees publish the size of the DOE intelligence budget, although the congressional intelligence committees do not.

Asked whether DOE's budget disclosure policy threatens national security, the CIA did its best to provide an evasive response: "DOE's intelligence budget includes, but is not limited to, its National Foreign Intelligence Program (NFIP) budget request, which remains classified. Therefore, neither the size nor the components of the DOE NFIP request have been publicly disclosed." End of statement.

If logic counted for anything, this response would hardly be satisfactory. But it is interesting nevertheless. Significantly, the CIA statement implies that the widely-reported total intelligence budget can safely be acknowledged since, like the DOE intelligence budget, the total includes non-NFIP (e.g., tactical intelligence) as well as NFIP programs. More basically, the CIA statement concedes the obvious point that the amount of intelligence spending *per se* is not sensitive. Rather, from the Agency's point of view, it is the size of the administrative construct called "the National Foreign Intelligence Program" that must be concealed from the public-- a purely parochial interest, and one that is not founded on any clear distinction between sensitive and non-sensitive information.

A recent report by the Congressional Research Service makes the interesting observation that during World War II, spending for the Office of Strategic Services, the predecessor of the CIA, was openly published. But that was before the cold war poisoned American political institutions and established secrecy as the norm. The CRS report, written by Richard A. Best Jr. and Elizabeth B. Bazan and entitled *Intelligence Spending: Should Total Amounts Be Made Public?* recapitulates the twenty year old controversy over budget secrecy, but chastely refrains from taking sides. A copy is available from S&GB.

The Secrecy System v. Glenn T. Seaborg

Nobel laureate Glenn T. Seaborg, former Chairman of the Atomic Energy Commission (and FAS Sponsor), recounts his arduous struggle with government officials over the classification of his personal journals in an article entitled "Secrecy Runs Amok" (*Science*, 3 June 1994, pp. 1410-1411).

Dr. Seaborg's journals, which constitute an important historical source, were mutilated over the course of multiple, multi-year classification reviews, leading him to conclude that classification had become "an arbitrary, capricious, and frivolous process, almost devoid of objective criteria." At one point, the government classified "my description of one of the occasions when I accompanied my children on a 'trick or treat' outing on a Halloween evening." In fact, he writes, "hardly any of the approximately 1000 classification actions taken so randomly by the various reviewers could be justified on legitimate national security grounds."

Government officials claim that there is another side to the story and that Dr. Seaborg violated established procedures for protecting classified information. Citing a classified case file on Seaborg, one official asserted with some hyperbole that "If his name weren't Glenn Seaborg, he'd be in jail now." The question of jail time for officials who abuse their authority to classify in the first place did not arise.

Secrecy & Government Bulletin is written by Steven Aftergood. The Federation of American Scientists Project on Secrecy & Government is supported by grants from the Rockefeller Family Fund, the Millstream Fund, the Deer Creek Foundation, and the C.S. Fund. This publication may be freely reproduced.