What Do You Want? Information.

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promote the withholding of information. In contrast,
wherever possible try to record only factual
information and avoid prematurely documenting your
opinions.

Make sure that any documents to be protected as
classified have in fact been processed... [by the] agency
with the strongest connection to the national defense.

Clearly identify and draft documents as
recommendations rather than decisions [to make them
"predecisional" and thus exempt under the FOIA].

If you must document a decision, make sure that
it is consistent with the decision that you ultimately intend
to make public. [1]

Counsel's participation in the preparation of
particular documents may serve as an additional basis for
asserting that they are exempt from FOIA based on a
claim of attorney work product privilege.

"The document and the culture it represents is an
affront to openness and honesty in government," Wolpe
wrote to NASA's Admiral Truly on February 26. Truly
subsequently repudiated the document.

Generally, our impression has been that most
classification abuses are not willful acts, but rather the
result of more or less unconscious bureaucratic imperatives
that promote the withholding of information. In contrast,
what makes this document remarkable is its calculated,
deliberate character and its evident contempt for the
public. Unfortunately, it would not exist if it did not
reflect a widespread attitude within many sectors of the
government.

At the same time, the memorandum contains an
element of absurdity, since it violates most of its own
recommendations. Clearly, the NASA authors are novices
at public deception. For more sophisticated efforts, you
still have to go to defense and intelligence.

Copies of the memorandum and Rep.
Wolpe's letter are available from our office.

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A CIA officer contacted us recently, explaining
that he was a liaison for "certain defense agencies," one of
which wanted to speak to us about nuclear rocket
propulsion efforts in the former Soviet Union. If we
would agree to a meeting, it would, he assured us, be kept
confidential.

Out of curiosity, and since we are not ordinarily
in the business of withholding public information, we
agreed. So a friendly collection officer came by, who
turned out to be from Naval Intelligence. We gave her
some general answers to some general questions about the
history, status, and funding of Russian nuclear rocket
programs, and provided copies of some technical papers
presented at U.S. conferences over the last year. By virtue
of this encounter, we became a "one-time source." (You
can be a one-time source, she explained with a straight
face, three times. After that you need to be registered
with the Defense Intelligence Agency.)

Meanwhile, we attempted to elicit some
intelligence of our own. Doesn't she find it incongruous
that there is more technical information in the public
domain about Russian nuclear rocket programs than about
U.S. Defense Department programs in the same field? (Not
particularly.) May we infer from her questions that
the U.S. Navy has an active interest in nuclear rocket
propulsion? (Yes.) Well, then why is Naval Intelligence
pursuing this issue? (To beat the Air Force.)

Classification Guides

What are the precise criteria by which information
is determined to be classified? That's classified too.

The classification system is based on the vague
assertion that information may be withheld from the
public if its disclosure could cause some degree of
"damage to the national security." This standard is so
elastic that it could permit classification of almost
anything, subject to the classifier's discretion.

On a practical level, most classification offices use
classification guides that identify particular categories of
information that may be withheld. However, in most
cases, the classification guides themselves are exempt from
public disclosure. In this way, the classification process
is largely shielded from public scrutiny and debate.

We recently obtained a 1990 classification guide
for an Air Force Anti-Satellite (ASAT) program, which
sheds some light on the standards by which information
is judged to be classifiable. Several insights emerge from
a review of this document.

It is remarkable, on the one hand, that if causing
"damage to national security" were literally the standard
for classifying information, it would seem that very little
about ASATs should be classified, particularly in an era
when few U.S. adversaries have satellites, much less anti-
satellite weapons. On the other hand, the irreducible
subjective element in what constitutes such damage
accounts for the fact that much information, like this classification guide itself, is withheld from the public.

The guide, which contains no sensitive information, does include at least one obvious violation of official policies. Therefore, and common sense. It states that ASAT program-related information is "classifiable" if it would "provide foreign interests with propaganda capable of damaging the U.S. national security.'

If U.S. national security can be damaged by foreign propaganda (which is, moreover, factual), then the nation is much weaker than most people would have supposed. Alternatively, the term "damage to national security" is being used in such an arbitrary way as to be useless for establishing meaningful classification criteria.

A copy of the Air Force ASAT classification guide is available from our office.

A Different Reaction

Steven Garfinkel, Director of the Information Security Oversight Office (ISOO), graciously granted us an interview at his office on February 20. Excerpts follow. A full transcript is available from our office. ISOO, established by Executive Order, is responsible for implementing and monitoring the government classification system.

S&GB: I have the impression that you believe that there is room for improvement in the classification system.

Garfinkel: I think we've been pretty clear that the system is utterly gone to have to change as the world is changing. I think I've also been fairly clear that right now we are confronted by so much uncertainty that changes that we might recommend in the very near term are not fundamental changes-- there are not going to be changes in the near term that are going to restructure the way we deal with national security information, although we certainly hope to improve in both the declassification area and in the enforcement of need to know.

S&GB: Do you expect your office to be initiating or proposing or advancing even these incremental changes over the next few years?

Garfinkel: I think it's going to come from the top of the Administration. I think there is already the recognition that change needs to come at the top management levels of your bureaucracies at the Department of Defense. I think Cheney, General Powell, other people who work directly for them, Bob Gates, I think they recognize this change is inevitable. That's going to be necessary. The direction comes from the top. I hear all of this stuff about the bottom up in the bureaucracy, but I've never seen the bureaucracy work that way.

S&GB: What about special access programs? Why do we have special access programs in the first place?

Garfinkel: Well, I guess we have special access programs out of the recognition that "need to know" is not enforced as well as it should be, and that by calling something a special access program you're in a better position to enforce need to know.

S&GB: And is it a fact that need to know is not enforced as well as it should be?

Garfinkel: Yeah, that's a definite fact. And if we were able to get it enforced as it should be, I don't think we'd need special access programs. And I think that's going to be the direction we're heading in. I think we've come to realize that special access programs are not a cure-all by any means and sometimes they're worse than...

S&GB: The cure is worse than the disease.

Garfinkel: Exactly. So I think we'll get away from special access programs. They kind of became oversused. And everybody looked to them as an easy solution. And they weren't always a solution.

S&GB: I'm wondering if there aren't any magic bullets or simple, grand solutions that will drastically simplify the declassification review problem.

Garfinkel: We're looking at the idea of a 'drop dead date'--anything that is x number of years old is declassified unless an agency specifically looks at a particular document and says, this one can't be but the rest can. But if we look at a drop dead date, it's going to be a lot longer than twenty years.

S&GB: Why policy?

Garfinkel: Because we're going to come up with intelligence information and sources that are still alive. And we're going to have to correspond the drop dead date in some degree to other areas in the government. For example, census data is closed for 72 years.

S&GB: Not for national security reasons.

Garfinkel: For privacy reasons. So there are other sensitivity factors that are believed to warrant a much greater period of closure. Whatever our system is going to be, we're going to be hard pressed to come up with a system that's radically different. Already, our system is radically different from that of our allies. They view our system as incredibly more open than theirs. If we're going to go a lot further, we're going to have that problem of sharing information. I've had lots of people in your position tell me that's not true. But I've had lots of people who work for those governments tell me it is true. And if our government hears that, they're going to believe the people from the foreign government...

S&GB: It would be a shame to let the influence of those more closed systems dominate or determine...

Garfinkel: I'm not suggesting we're going to let our system and we won't-- our system is not based on any foreign system. But in coming up with either a date or, say, as a drop dead date, where everything is open simply because of its age, because of the assumption that anything that old is no longer sensitive, from the policy makers that I know, it's not going to be at the twenty year level and it's not going to be at the thirty year level. I've had a lot of historians tell me that it's just not going to be too soon. And I think it has to be much sooner.

Garfinkel: There's nothing that prevents someone from asking for anything that's classified at any age. One month, one day old, you can get it reviewed for declassification at any age.

S&GB: What role, if any, do you see for individuals or outside groups like mine in promoting open government?

Garfinkel: Here I differ from most of my colleagues. I believe that you folks play a constructive role. I would be hard pressed to find two or three other people who would agree. My colleagues, when they hear your name-- their reaction is different than mine. As a matter of fact, you personally are a throwback in the sense that when I first took this job twelve years ago there were several individuals who were very active doing what you're doing now, but I'm not sure that they're as interested in trying to portray horror stories and that sort of stuff, and I think that kind of stuff keeps us on our toes. A lot of times it angers us and frustrates us and we're very disturbed that what we're reading is slanted. But I think in the overall picture it's a positive. And the reason I say you're a throwback is that these people all disappeared. Everybody became a moderate.

S&GB: The system wore them down.

Garfinkel: I don't know what it was, but everybody became a moderate. For example, when we would do seminars and things like that and I would want somebody like you to get up there and get the audience really angry and curious, all they kept saying were very moderate and modest things. It was hardly exciting at all. So I think you serve a positive purpose now. We need to have people like you to give us for greater openness... I think your conclusions [about the CIA openness initiative] are wrong. My indications are that something is going to come of this, and that [CIA Director] Gates is determined that something is going to come of this.

S&GB: I'll be the happiest if I'm proven wrong and they greatly relax their criteria for what's withheld. But so far, they're as bad if not worse than ever.