

13424

GAO

United States General Accounting Office
Washington, DC 20548

Logistics and
Communications
Division

B-198348

APRIL 11, 1980

The Honorable Richardson Preyer
Chairman, Subcommittee on Government
Information and Individual Rights
Committee on Government Operations
House of Representatives

Dear Mr. Chairman:

Subject: The [Central Intelligence Agency's
Handling of Mandatory Review Requests
Under Executive Order 12065] (LCD-80-51)

Your March 19, 1980, letter requested that we provide you with a brief summary and analysis of the Central Intelligence Agency's (CIA's) handling of mandatory review requests under Executive Order 12065. You also requested that we provide this information, without agency comment, by April 11, 1980.

Presented below are summaries of (1) the requirements of the Executive order and its implementing instruction, (2) CIA's procedures for handling the requests, and (3) the number and disposition of requests received during calendar years 1973 through 1979.

EXECUTIVE ORDER REQUIREMENTS

Executive Order 12065 took effect December 1, 1978. Section 3-501 of the order provides for mandatory review requests as follows.

"Agencies shall establish a mandatory review procedure to handle requests by a member of the public, by a government employee, or by an agency, to declassify and release information. This procedure shall apply to information classified under this Order or prior Orders. Except as provided in Section 3-503, upon such a request the information shall be reviewed for possible declassification, provided the request

(941187)



reasonably describes the information. Requests for declassification under this provision shall be acted upon within 60 days. After review, the information or any reasonably segregable portion thereof that no longer requires protection under this Order shall be declassified and released unless withholding is otherwise warranted under applicable law."

Executive Order 11652, in effect from June 1972 through November 1978, contained similar requirements.

Section 3-503 of Executive Order 12065 provides that information less than 10 years old, originated by the President, members of his staff, or others acting on his behalf, is exempt from mandatory review.

Implementing instructions for Executive Order 12065, issued by the General Services Administration's Information Security Oversight Office, provide for each agency to designate offices to which mandatory review requests may be submitted. The designated offices are required to acknowledge receipt of requests. If a request does not reasonably describe the information sought, the requestor is to be notified that, unless additional information is provided or the scope of the request is narrowed, no further action will be taken.

If the designated office determines that the requested information may not be declassified in whole or in part, the requestor is to be given a brief statement as to the reasons for denial and information concerning the right to appeal the determination, including the name, title, and address of the agency official to whom the appeal is to be made. Appeals must be filed within 60 days to be considered and be acted on within 30 days.

If a request concerning foreign government information is made to an agency that did not receive or classify the information, the request is to be referred to the appropriate agency. In cases where agency policy or guidelines do not apply, consultation with the foreign originator, through appropriate channels, is suggested before final action on the request.

CIA PROCEDURES FOR
HANDLING REQUESTS

CIA has established an Information and Privacy Division, headed by a coordinator, which is responsible for administering requests for information made to CIA under Executive Order 12065 and the Freedom of Information and Privacy Acts. All types of requests, including mandatory review requests, are sent to the Division and are handled on a first-in, first-out basis. The Division then assigns the requests to the CIA components that originated the documents being requested.

The components review the documents to determine whether the documents can be declassified, in whole or in part, and released. However, the initial reviewing officers generally do not have authority to release the documents. The coordinator told us that the initial determinations are reviewed at least once, and sometimes three or four times, before being approved for release. According to the coordinator, about 60 CIA officials had been authorized to approve the release of information.

In August 1977 CIA issued a handbook of guidance and procedures for processing requests made under Executive Order 11652 and the Freedom of Information and Privacy Acts. The coordinator told us that, because of a shortage of staff, the handbook had not been revised since Executive Order 12065 had been issued. However, most of the procedures were applicable to both orders.

In addition to the handbook, which provides general guidance, the components use classification guides that provide specific guidance on the types of information requiring classification and the periods of time that the information is required to remain classified. On rare occasions when a guide covering the subject matter of a request is unavailable, an official with top secret original classification authority reviews the document and determines the release. Even in those cases, release of the document may be contingent upon coordination with other CIA components or other agencies.

The coordinator told us that CIA's policy was to automatically deny mandatory review requests involving foreign government information. Generally, there was no need to contact the foreign originators because they rarely approved the release of information that they had provided.

NUMBER AND DISPOSITION OF
MANDATORY REVIEW REQUESTS

During calendar years 1973 through 1979, CIA received 2,074 mandatory review requests, granted 590 in full and 848 in part, and denied 268. The following tabulation, taken from CIA records, shows the requests in detail for the 7-year period.

<u>Calendar year</u>	<u>Requests received</u>	<u>Granted in full</u>	<u>Granted in part</u>	<u>Denied</u>	<u>Miscellaneous (note a)</u>
1973	110	50	19	18	-
1974	181	89	47	23	-
1975	232	63	88	28	5
1976	374	81	220	37	6
1977	568	156	268	101	11
1978	428	85	105	25	12
1979	<u>181</u>	<u>66</u>	<u>101</u>	<u>36</u>	<u>5</u>
Total	<u>b/2,074</u>	<u>590</u>	<u>848</u>	<u>268</u>	<u>39</u>

a/Includes those requests canceled or withdrawn, referred to other agencies, or for which there were no CIA records.

b/This figure also includes open requests and 26 requests for which the disposition could not be determined.

As of December 31, 1979, CIA had 303 mandatory review requests on which action had not been completed. A check of the open cases on March 25, 1980, showed that the number of such cases had been reduced to 263. Of those requests, about 90 percent were over 60 days old.

The coordinator told us that a shortage of resources was the primary reason for CIA not acting on the requests within 60 days, as required by the Executive order. As

noted previously, the Information and Privacy Division handles Freedom of Information and Privacy Act requests, as well as the mandatory review requests. During calendar years 1975 through 1979, CIA received 11,536 Freedom of Information Act requests, 9,702 Privacy Act requests, and 1,783 mandatory review requests. Despite over 100 staff years of effort in 1979, there were still 2,355 open Freedom of Information and Privacy Act requests as of December 31, 1979.

- - - -

We will be glad to discuss our comments or assist you in any other way.

Sincerely yours,

A handwritten signature in black ink, appearing to read "R.W. Gutmann". The signature is written in a cursive style with a horizontal line underlining the name.

R.W. Gutmann
Director