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May 30, 2006
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William Leonard, Director
Information Security Oversight Office
National Archives and Records Administration
700 Pennsylvania Avenue, NW, Room 500
Washington, DC 20408

Dear Mr. Leonard:

Pursuant to executive order 12958, as amended, section 5.2(b)(6), I am writing to present a concern regarding implementation of the President's executive order on national security classification and to request that ISOO take appropriate action.

I believe that the Office of the Vice President is willfully violating a provision of the executive order and of the implementing ISOO directive.

Specifically, the Office of the Vice President (OVP) is refusing to comply with the ISOO requirement to "report annually to the Director of ISOO statistics related to its security classification program." (ISOO Directive 1 at section 2001.80).

As you know, the President's executive order states that this and other ISOO Directive requirements are "binding" upon any "entity within the executive branch that comes into the possession of classified information." (EO 12958, as amended, at section 5.1, section 6.1b).

Yet despite this requirement, the OVP has failed to report on its classification and declassification activity for three years in a row.

Moreover, this appears to be a deliberate act on the part of the OVP, not simply a negligent one.

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Strangely, the OVP contends that it is not obligated to comply with this provision of the executive order. Thus, OVP spokeswoman Lea Ann McBride told the Chicago Tribune last week:

"This has been thoroughly reviewed and it's been determined that the reporting requirement does not apply to [the office of the vice president], which has both legislative and executive functions." ("Cheney Keeps Classification Activity Secret" by Mark Silva, Chicago Tribune, May 27, attached).

But this OVP claim is a non sequitur.

Nothing in the executive order excuses the OVP from reporting on classification activity in the performance of its executive duties merely because it also has separate legislative functions. It is hard to see how such an argument could be proposed by a reasonable person in good faith.

Since the OVP has publicly staked out a position that openly defies the plain language of the executive order, I believe ISOO now has a responsibility to clarify the matter. Otherwise, every agency will feel free to re-interpret the order in idiosyncratic and self-serving ways.

I respectfully urge that you undertake one of the two following courses of action:

1. Exercise the authority of the ISOO Director under Section 5.5 (including 5.5b on sanctions) to compel the OVP to comply with the reporting requirements of the executive order;
2. Ask the Attorney General to render an opinion on the applicability to the OVP of the annual reporting requirement, pursuant to Section 6.2b of the executive order.

I recognize that the OVP's classification activity is quantitatively small, by comparison with other executive branch elements, and that it could easily be overlooked without much detriment to the aggregate statistical reporting by ISOO.

But by casting its non-compliance as a matter of principle, the OVP has mounted a challenge to the integrity of classification oversight and to the authority of the executive order. In my opinion, it is a challenge that should not go unanswered.

Thank you for your consideration.

Respectfully yours,

Steven Aftergood
Director, Project on Government Secrecy
Federation of American Scientists

<http://www.chicagotribune.com/news/nationworld/chi-0605270039may27,1,1588921.story>

Cheney keeps classification activity secret

By Mark Silva
Washington Bureau

Advertisement

May 27, 2006

WASHINGTON -- Federal agencies made somewhat fewer decisions to classify top secret and confidential information last year than the year before--and declassified slightly more documents--according to a new government report Friday.

Yet Vice President Dick Cheney again refused to report his office's activities in either the classification or declassification of documents during 2005, as he has refused to disclose since 2003.

Despite an executive order signed by President Bush in 2003 requiring all agencies or "any other entity within the executive branch that comes into the possession of classified information" to report on its activities, the vice president's office maintains that it has no legal obligation to report on its classification decisions.

Cheney's office told the Tribune in an April report on the administration's propensity for secrecy that it is under no obligation to report this information. The vice president says his office is not an agency, and that the vice president is unique in having both an executive role and legislative role--he is president of the Senate.

But monitors of government secrecy say the vice president is flouting his own president's authority in this matter.

"It undermines oversight of the classification system and reveals a disdain for presidential authority," said Steven Aftergood, director of the Project on Government Secrecy at the Federation of American Scientists. "It's part of a larger picture of disrespect that this vice president has shown for the norms of oversight and accountability."

A spokeswoman for Cheney, asked for a response, reiterated the vice president's stance on the issue.

"This has been thoroughly reviewed and it's been determined that the reporting requirement does not apply to [the office of the vice president], which has both legislative and executive functions," spokeswoman Lea Anne McBride said Friday.

Since the beginning of Bush's presidency, agencies and other entities each year had reported increasing

numbers of decisions to classify information as top secret, secret or confidential. These numbers rose from 8.65 million classification decisions reported in 2001 to a record 15.65 million in 2004.

Last year, agencies made 14.2 million decisions, a 9 percent decrease from 2004 and slightly less than what had been reported in 2003, according to a new report of the National Archives Information Security Oversight Office.

Agencies also declassified 29.5 million pages of documents in 2005, the report shows. This marked a 4 percent increase from the 28 million pages of documents declassified the year before.

This represents a turnaround from the annual scaling back of documents declassified during Bush's presidency, with 100 million pages declassified in 2001 and 44 million declassified in 2002.

The National Archives office that monitors these decisions calls last year's increases in declassification and decreases in classification "a positive step."

"It's incrementally good news," Aftergood said. "The numbers are down from record-high levels to second record-high levels . . . It's hard to get excited about that, but it's better than increases."

With some 80 agencies and other entities taking part in the National Archives' annual accounting of activity, the report notes that only the Office of the Vice President, the president's Homeland Security Council and the president's Foreign Intelligence Advisory Board failed to report on its activities.

In the past, the Archives report notes, the vice president's activities "historically have not reported quantitatively significant" numbers. But Aftergood suggests there is no way of knowing what the vice president has done since 2002 because he isn't reporting.

"The reality is that until 2002, they did report," he said. "Somebody made a decision that they don't want to do what they used to do. . . . They have to explain why they stopped doing it, and they haven't done that."

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