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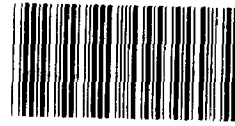
BY THE COMPTROLLER GENERAL

# Report To The Congress

OF THE UNITED STATES

## Oversight Of The Government's Security Classification Program-- Some Improvement Still Needed

Oversight of the national security information classification program has improved, but some deficiencies in the activity reports submitted by agencies still exist. Complete reporting by the agencies and the Information Security Oversight Office is necessary if the President, the Congress, and the public are to be kept fully informed of the program's status. Some agencies have established procedures that make it difficult for the Oversight Office to obtain all documents needed to effectively inspect agency compliance.



113985

This report recommends actions that should improve agency compliance and program oversight.



① 13621

LCD-81-13  
DECEMBER 16, 1980

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COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20548

B-179296

To the President of the Senate and the  
Speaker of the House of Representatives

This report describes the results of our review of the first year of operation of the Information Security Oversight Office, established by Executive Order 12065 to monitor the Government's national security information classification program. It also discusses the action taken by the Oversight Office to implement recommendations made in our March 9, 1979, report. This report is the fourth in a series on the Government's classification program.

We are sending copies of this report to the Director, Office of Management and Budget; the Administrator of General Services; the Secretaries of Defense and Energy; and the Director of the Central Intelligence Agency.

A handwritten signature in black ink, reading "Thomas P. Blasko".

Comptroller General  
of the United States



D I G E S T

A March 1979 GAO report on executive branch oversight discussed the ineffectiveness of the Interagency Classification Review Committee in monitoring the Government's information security program and made five recommendations to ensure that agencies comply with the provisions of the Executive order.

As a result of the implementation of some of the recommendations, oversight of the program has improved. In some cases, however, the Information Security Oversight Office did not take the necessary actions to ensure effective agency compliance with the order.

ACTIONS TAKEN ON PRIOR  
GAO RECOMMENDATIONS

GAO recommended that the Oversight Office notify the Administrator of General Services and the National Security Council when an agency fails to comply with significant provisions of the order. The Oversight Office preferred instead to use its influence with the agencies to obtain compliance with the order. It had success in using this approach with several agencies, but GAO could not determine its effectiveness with several other agencies because of ongoing negotiations. (See p. 4.)

GAO recommended that the Oversight Office be provided with sufficient staff to develop and carry out a strong oversight program. The staff has almost doubled, and more comprehensive inspections were being made. (See p. 5.)

In the past, the Interagency Classification Review Committee annual reports lacked all the information necessary to adequately inform the President, the Congress, and the public of the status of the program. The Oversight Office's first annual report was more informative than prior reports. However, it did not disclose that the Department of Defense's (DOD's) largest classifier, the National Security Agency, was not included in DOD's reported classification actions. It also did not report eight categories of statistics collected from agencies, some of which provided meaningful data. (See p. 5.)

GAO recommended that the Oversight Office require agencies to submit statistical reports that provide complete information on their classification activity. Because of delays in getting its statistical reporting requirements approved, it required agencies to submit statistics for only a 5-month period in 1979. Although fiscal year 1980 reporting should provide a better basis to measure agency compliance, the Oversight Office is not requiring agencies to submit complete statistics on (1) the number of classification actions, (2) declassification categories assigned to information, (3) mandatory review requests and appeals, (4) individuals who classify information, and (5) classification infractions. (See p. 6.)

GAO recommended that the Oversight Office revise its instructions to require that personnel who are not the original classifiers, but who apply classification markings on a derivative basis, be identified on the documents. The Oversight Office believed GAO's recommendation had merit but has not taken steps to implement it, because it might create an administrative burden at some agencies. (See p. 9.)

WAIVERS TO EXECUTIVE ORDER  
REQUIREMENTS GRANTED BY  
OVERSIGHT OFFICE

Between December 1978 and April 1980, the Oversight Office granted nine waivers to certain provisions of Executive Order 12065. GAO believes that the waiver granted to the Departments of Defense and Energy allowing them to refrain from marking the classification level of each portion of a document containing both national security information and restricted or formerly restricted data covered by the Atomic Energy Act of 1954 should be rescinded. GAO agrees with an assessment made by DOD that not marking such documents could result in (1) improper derivative classification and safeguarding, (2) extension of classification beyond the time necessary, (3) additional expenses, and (4) unclassified information being withheld from the public. (See p. 15.)

OVERSIGHT OFFICE DENIED ACCESS TO RECORDS

Executive Order 12065 authorizes the Oversight Office to make onsite reviews of the information security program at agencies that handle classified information and requires agencies to provide reports and other information necessary for the Oversight Office to fulfill its responsibilities. The order allows agencies to deny access to only specific categories of classified information which "would pose an exceptional national security risk."

Notwithstanding the provisions of the order, agencies have written directives which deny the Oversight Office access to records not specified in the Executive order. The denials are based on section IV D of the Oversight Office's implementing directive which was intended to control unauthorized dissemination of

classified information provided by one agency to another, not to prevent the Oversight Office from reviewing such material in carrying out its oversight responsibilities.) (See p. 25.)

#### RECOMMENDATIONS

The Administrator of General Services, in consultation with the National Security Council, should direct the Information Security Oversight Office to:

- Work with agencies to develop cost-effective methods of accumulating and reporting program activity so that agency reports contain complete information on (1) all classification actions, (2) the declassification categories assigned to classification actions, (3) mandatory review requests and appeals, (4) the number of individuals who classify information, and (5) classification infractions.
- Revise its instructions to require that personnel who apply derivative classification markings be identified on the documents.
- Rescind the waiver to the Departments of Defense and Energy concerning portion marking national security information contained in documents that also contain restricted or formerly restricted data.
- Revise section IV D of its implementing directive to clarify that the only records that can be denied to the Oversight Office in carrying out its oversight function are those whose disclosure would pose an exceptional national security risk. Such a revision, however, should also include special arrangements for the Oversight Office to obtain access to those documents containing intelligence data or references to sources and methods that are needed to review derivative classifications.



## AGENCY COMMENTS

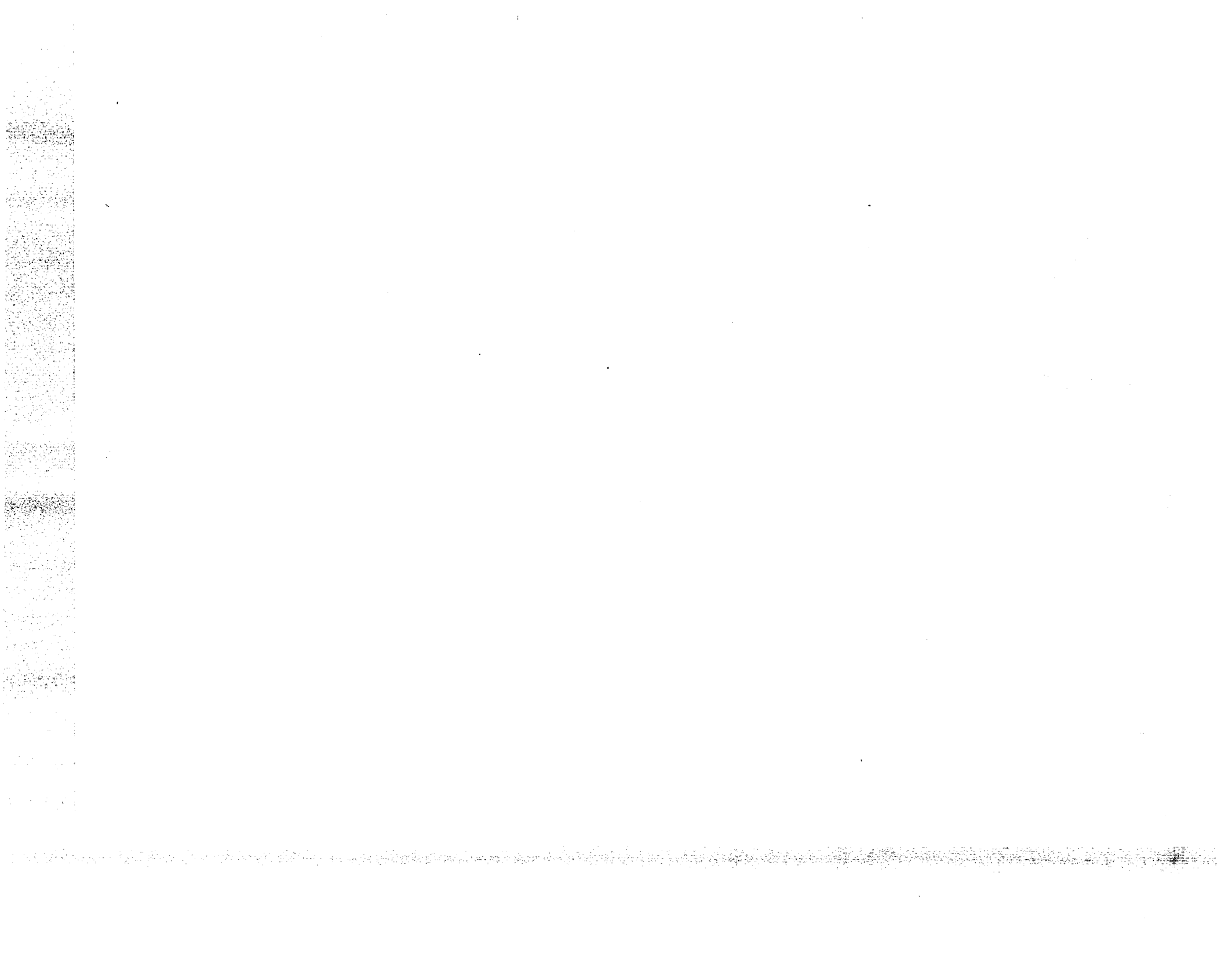
The Oversight Office, primarily because of the added costs involved, does not totally agree with GAO's recommendations that agencies should be required to submit complete reports on their activities and that derivative classifiers should be identified on the documents they classify. The Oversight Office said that identifying derivative classifiers had merit and that it would attempt to implement that practice at agencies where it was economically feasible. (See p. 10 and app. I.)

GAO believes that cost-effective methods could be used to collect the data which is needed by the Oversight Office to determine if the objectives of the Executive order, classifying less information and declassifying it sooner, are being met. However, GAO recognizes that the scope of its review did not include an evaluation of the financial implications involved in implementing its suggestion; therefore, GAO has modified its recommendation. GAO still believes that maintaining control over derivative classifiers is essential because 95 percent of the information classified is done on a derivative basis.

The Oversight Office has agreed to reexamine its earlier decision on the waiver given to the Departments of Defense and Energy. DOD is opposed to the waiver, but Energy strongly supports it. (See p. 21 and apps. II and III.)

While the Oversight Office agreed in principle with GAO's recommendation on access to records, it told GAO that access problems in the past had only caused limited inconvenience and did not warrant a revision to the implementing directive. (See p. 29.)

GAO believes that its findings clearly demonstrate the need to revise and clarify the section of the implementing directive concerning access to records.



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ABBREVIATIONS

CIA	Central Intelligence Agency
DOD	Department of Defense
DOE	Department of Energy
GAO	General Accounting Office
ICRC	Interagency Classification Review Committee
ISOO	Information Security Oversight Office
NSC	National Security Council

## CHAPTER 1

### INTRODUCTION

This report was requested by the Chairmen, Subcommittee on Priorities and Economy in Government, Joint Economic Committee, and the Subcommittee on Government Information and Individual Rights, House Committee on Government Operations.

The classification of national security information has been governed by various Executive orders since 1940 and is currently governed by Executive Order 12065, which took effect December 1, 1978. It superseded Executive Order 11652, which was in effect from June 1972 through November 1978.

Executive Order 12065 specifies that, except as provided by the Atomic Energy Act of 1954, information may be classified only as top secret, secret, or confidential. The order prohibits the use of special designations, such as "agency confidential," in conjunction with the classification designations.

To facilitate excerpting and other uses, each classified document, by marking or other means, is to indicate clearly which portions are classified, with the applicable classification designation, and which portions are not classified.

The classification of information is divided into two categories--original and derivative. An original classification is an initial determination that information, in the interests of national security, requires a specific degree or level of protection against unauthorized disclosure. A derivative classification occurs when classified information is extracted or summarized from one document for use in another. A derivative classification also occurs when information is classified based on directions included in an approved classification guide. Classification guides have to be approved in writing by an agency head or by an official with top secret classification authority.

The President has designated the heads of certain agencies and officials of those agencies to be original classifiers. Some agency officials have top secret authority, while others, depending on their need for such authority, have secret or confidential. The order has attempted to

reduce the number of authorized classifiers on the assumption that such action will reduce the number of documents unnecessarily classified.

At the time of original classification of information, an individual with original classification authority is required by the order to set a date or event for automatic declassification no more than 6 years later. Only officials with top secret classification authority and agency heads listed in the order may classify information for more than 6 years from the date of original classification. According to the order, the authority to extend classification beyond 6 years "shall be used sparingly."

U.S. Government information requiring extended protection can be classified for up to 20 years without review. Information constituting permanently valuable records of the Government must be reviewed for declassification at the end of 20 years, but classification can be extended for additional 10-year periods, provided the information is reviewed at the end of each 10-year period. Foreign government information may be classified for 30 years before it has to be reviewed.

Implementing instructions for Executive Order 12065 require agencies to take a physical inventory of top secret material at least annually. However, agency heads may authorize that the annual inventory of top secret information in repositories, libraries, or activities, which store large volumes of such information, be limited to documents to which access has been afforded within the past 12 months.

Both orders provided for an oversight group to monitor implementation of the program. Under Executive Order 11652, the National Security Council (NSC) monitored the program, with the assistance of an Interagency Classification Review Committee (ICRC) composed of representatives of the Departments of Defense, Justice, and State; the Atomic Energy Commission (now part of the Department of Energy (DOE)); the Central Intelligence Agency (CIA); NSC; and a Chairman designated by the President.

The new order established the Information Security Oversight Office (ISOO) and placed it within the General Services Administration. The order makes the Administrator of General Services responsible for implementing and monitoring the program and provides for him to delegate that responsibility to ISOO. The Administrator also appoints

the Director of ISOO, subject to approval of the President. The order also made NSC responsible for overall policy direction and established the Interagency Information Security Committee, comprised of representatives of major agencies involved with national security information. The Committee serves to advise ISOO on the order's implementation.

The order provides that the ISOO Director (1) oversee agency actions to ensure compliance with the order and implementing directives, (2) develop implementing directives in consultation with the agencies and subject to approval by NSC, (3) review all agency implementing regulations and guidelines for systematic declassification review, (4) have authority to make onsite reviews and to require reports, information, and cooperation from each agency, and (5) report annually to the President, through the Administrator of General Services and NSC, on implementation of the order.

To oversee agency actions and ensure compliance with the order and the implementing directive, ISOO (1) established annual statistical reporting requirements, (2) established a schedule for onsite visits to agencies, (3) assisted agencies in developing training programs, and (4) reviewed agency regulations and guidelines.

#### OBJECTIVES, SCOPE, AND METHODOLOGY

This review is the fourth in a series of reviews of national security classification policies, procedures, and practices. The first report (LCD-78-125, Mar. 9, 1979) discussed the need for improved Executive branch oversight of the program. A second report (LCD-80-16, Oct. 26, 1979) evaluated the Department of Defense's (DOD's) classification activities, and a third report (LCD-81-3, Oct. 15, 1980) discussed declassification activities by Executive branch agencies.

This review of ISOO was made to determine the status of our prior recommendations and to evaluate ISOO's first year of operation.

We reviewed Executive Order 12065 and its implementing directive. We held discussions with the ISOO staff and reviewed statistical reports submitted by the agencies, inspection reports by the ISOO staff, and correspondence with the agencies. We also reviewed minutes of meetings of the Interagency Information Security Committee and observed an ISOO onsite inspection.

## CHAPTER 2

### ACTIONS TAKEN ON OUR PREVIOUS RECOMMENDATIONS

Our March 9, 1979, report on executive branch oversight of the classification program recommended that the Administrator of General Services, in consultation with NSC, should:

- Require ISOO to report to the Administrator and NSC when an agency fails to comply with significant provisions of Executive Order 12065 or its implementing instructions and corrective action has not been taken.
- Provide ISOO with sufficient staff to develop and carry out a strong program of indepth, onsite reviews at major installations that classify national security information.

We also recommended that the Administrator, in consultation with NSC, should direct ISOO to:

- Fully disclose the amount and significance of statistical information not included in its annual reports and the reasons for the omission.
- Require agencies, except those specifically exempted by NSC, to submit statistical reports on their classification actions, actions exempted from declassification within the prescribed 6-year period, classification abuses and unauthorized disclosures of classified information, authorized classifiers, and annual physical inventories of top secret material.
- Revise its instructions to require that personnel who apply derivative classification markings be identified on the documents.

The actions taken by ISOO on our recommendations are discussed below.

### PROMPT NOTIFICATION OF NONCOMPLIANCE

The Acting Director of ISOO told us that special reports of significant noncompliance should be used only as a last resort. He said that ISOO preferred to work with the agencies to resolve compliance problems. ISOO's approach involves



notifying agency administrators of its findings and recommendations, requesting agency responses, conducting followup inspections, and, if necessary, visiting agency administrators to inform them personally of problems. The Acting Director cited the Department of Commerce as an agency with which ISOO's approach had been successful. Our review of correspondence between ISOO and Commerce showed that Commerce did eventually respond favorably to many of ISOO's recommendations. ISOO was also negotiating with other agencies, such as the Departments of Justice and State, to resolve some areas of noncompliance. Since these negotiations were still in process at the time of our review, we could not determine the effectiveness of ISOO's approach with those agencies.

#### NEED FOR SUFFICIENT STAFF TO MAKE ONSITE REVIEWS

At the time of our first review, ICRC had only eight staffmembers. The 96 staff visits made in 1977 generally consisted of 4-hour discussions with top security officials of agencies in the Washington, D.C., area.

The ISOO staff, which has been increased to 15, has been making more comprehensive reviews in the Washington, D.C., area. It has also reviewed agencies at the operating level and a few DOD contractor facilities. During these reviews, which are more in the nature of inspections that take several days, the staff evaluates agency procedures, examines documents to ascertain the propriety of their classification and marking, and evaluates physical security and training.

During 1979, the staff made 123 inspections and 18 followup inspections at 52 agencies, including headquarters offices in the Washington, D.C., area; field activities in Florida, California, and Europe; and DOD contractor facilities in Florida and California. In 1980 ISOO visited agency and contractor activities in Atlanta, St. Louis, Norfolk, and Boston.

#### ISOO ANNUAL REPORT

In the past, ICRC annual reports lacked all the information necessary to adequately inform the President, the Congress, and the public of the status of the program, because ICRC did not require agencies to report complete information on classification activities.

ISOO's first annual report, issued in April 1980, was more informative than prior ICRC reports. However, it could have been misleading because it did not disclose that DOD's largest classifier, the National Security Agency, was not included in DOD's reported classification actions. Although the report stated that some statistics collected from the agencies were omitted because of the lack of consistent agency reporting, we found that some of the eight categories of omitted statistics could have been presented. For example, the report did not include information that showed that agencies reported over 8,000 instances of safeguarding infractions, over half of which were improper classification markings.

#### STATISTICAL REPORTING PROBLEMS

In our first report, we noted that classification activity reported to ICRC by agencies was incomplete and did not provide an effective means of evaluating agencies' compliance with Executive Order 11652. ISOO required agencies to submit statistics for only a 5-month period in 1979. Although fiscal year 1980 reporting should provide a better basis to measure agency compliance, ISOO is not requiring agencies to submit complete statistics on (1) the number of classification actions, (2) declassification categories assigned to information, (3) mandatory review requests and appeals, (4) individuals who classify information, and (5) classification infractions. Each of these five areas is discussed in more detail below.

#### Classification actions

A major objective of Executive Order 12065 is to increase openness in Government by reducing the amount of information being classified. One way to evaluate the successfulness of this objective is for ISOO to accumulate and compare, over a period of years, statistics on the total number of classification actions by the Government.

Agencies generally reported more complete data to ISOO on classification actions for 1979, than last reported to ICRC in 1977. DOD, however, continues to understate its classification actions. During a 3-week period in 1979, DOD sampled 1,005 of its units and compiled the classification actions reported by 71 percent of these units. The National Security Agency, the component that generates the largest

volume of classified information within DOD, was not included in the sample. This problem will continue because ISOO approved a reporting method for fiscal year 1980 that only requires DOD to sample messages processed worldwide through its Switch Network Automatic Profile System. We noted in our first report that this sampling method did not show the declassification category of the messages processed nor did it consider the millions of other classification actions, other than messages. DOD plans to report the declassification category of the messages processed by applying declassification category percentages from the DOD sampling method used for 1979. However, DOD will not report the millions of classification actions other than messages.

We believe that ISOO should rescind its approval allowing DOD's sample of classification actions to consist only of messages on its Switch Network Automatic Profile System. ISOO should require that DOD's sample include information within its components that reflects a representative number of the classification actions it generates.

#### Declassification categories assigned to information

To make information available to the public as soon as practicable, consistent with national security requirements, the order requires that at the time of original classification each original authority shall set a date or event for automatic declassification no more than 6 years from the date of classification. However, designated agency heads and officials with top secret classification authority may classify information for more than 6 years, provided they set a date or event for declassification or review not more than 20 years from the date of classification. According to the order, this authority should be used sparingly.

ISOO requires agencies to report the declassification categories assigned to only that information that is originally classified. However, about 95 percent of all classification actions are derivative, and the declassification categories of these actions are not reported to ISOO.

We believe that to accurately determine how much information is classified for the standard 6-year period and longer, ISOO should require statistics on the declassification categories of information classified both originally and derivatively.

### Mandatory review requests and appeals

Executive Order 12065 and its implementing directive require agencies to establish mandatory review procedures for public requests for the declassification and release of information. Agencies must decide whether or not to release this information, in total or in part, within 60 days of the request. An individual can appeal that decision, which must then be acted on within 30 days.

ISOO, however, does not require agencies to periodically report the total number of outstanding mandatory review requests and appeals that exceeds the required time limits for a decision. ISOO only requires that agencies provide information on the number of cases disposed of during a given period.

We believe that ISOO should require agencies to periodically submit the total number of mandatory review requests and appeals exceeding the 30- and 60-day requirement, as well as the number disposed of during each period. Such a requirement would provide ISOO with a basis to monitor agency compliance with the order.

### Individuals who classify information

The order allows classification guides to be used to derivatively classify information. Agencies reported that about 95 percent of all classification actions were derivative. In September 1979 DOD had about 170,000 derivative classifiers compared to about 2,000 original classifiers. ISOO, however, requires agencies to report only the number of original classifiers. In its April 1980 annual report, ISOO stated that it would continue to encourage agencies to limit the number of derivative classifiers in the belief that this would result in fewer classification actions.

Since classification guides can be used to derivatively classify information and since most classification is derivative, we believe that ISOO should require agencies to report the total number of original and derivative classifiers.

### Classification infractions

Pursuant to the NSC directive for implementing Executive Order 11652, ICRC required agencies to submit reports of

classification infractions, including unnecessary classification, overclassification, unauthorized classification, and failure to show classification authority. Agencies generally find infractions during internal inspections.

Reporting requirements for the 5-month test period in 1979 provided for agencies to report the types of classification infractions described above. However, instructions and forms sent to agencies in April 1980, for reporting classification activity for 1980, did not provide for those items to be reported. We believe that in order to conduct an effective oversight program, ISOO should require agencies to report classification infractions. With such reporting ISOO can determine if improvements are being made in the classification and protection of national security information.

IDENTIFICATION OF PERSONNEL WHO  
APPLY DERIVATIVE MARKINGS

Executive Order 12065 contains a special section on the use of derivative classification. The order allows the use of classification guides, which in effect, delegate authority to all individuals with proper security clearances to apply classification markings to information, based on instructions in the guides. Some agencies, such as DOE and CIA, specifically authorize the individuals who may classify on a derivative basis. We believe, however, that the use of classification guides, in most cases, eliminates the personal accountability that should be a part of the classification process. Therefore, we recommended that ISOO instruct agencies to require that personnel who apply derivative classification markings be identified on the documents.

ISOO officials told us that our recommendation had merit, but that ISOO did not have time to address it. Some agencies were not receptive to our recommendation because they believed sufficient accountability was provided by showing the office of origin on documents as required by the ISOO implementing directive. ISOO officials told us that DOE and CIA have devised a means of identifying on their documents the individuals who apply derivative classification markings. We believe that their desire to maintain accountability is commendable. We do not believe that showing the office of origin on documents provides for sufficient accountability and control, especially in DOD where there is a constant rotation of military personnel.

## RECOMMENDATIONS

We recommend that the Administrator of General Services, in consultation with NSC, direct ISOO to:

- Work with agencies to develop cost-effective methods of accumulating and reporting program activity so that agency reports contain complete information on (1) all classification actions, (2) the declassification categories assigned to classification actions, (3) mandatory review requests and appeals, (4) the number of individuals who classify information, and (5) classification infractions.
- Revise its instructions to require that personnel who apply derivative classification markings be identified on the documents.

Complete reporting of classification actions by DOD will require ISOO to rescind its approval allowing DOD's sampling of classification actions to consist only of messages on its Switch Network Automatic Profile System.

## AGENCY COMMENTS AND OUR EVALUATION

### ISOO comments and our evaluation

On August 22, 1980, the Director of ISOO commented on our findings and recommendations (see app. I). In commenting on our recommendation that ISOO should require agencies to submit complete statistical reports on their classification actions, ISOO stated that it has always been its policy to do so, consistent with the value of the data to the cost of collecting it.

ISOO said that, because it is information that is classified and not documents, agencies were only required to estimate the number of documents derivatively classified. ISOO further stated that "since in a derivative action the classifier only applies markings to information previously classified by an original authority, no new information is being withheld from the public by such action." According to ISOO, similar rationale was applied to its decision not to require agencies to report the declassification categories assigned to documents derivatively classified.

ISOO said that its policy included the complete reporting of mandatory review requests and that a detailed review of agencies' mandatory review programs was a major item in its inspection program.

ISOO did not agree that agencies should continue to report the number of derivative classifiers because "the exigencies of program continuity would not allow significant deviations" from a one-time figure that agencies reported during a 5-month test period in 1979. Those deviations, according to ISOO, would not warrant the cost to gather the data.

ISOO said that it has always required the reporting of classification infractions and will continue to do so.

ISOO agreed that our recommendation that personnel who apply derivative classification markings be identified on the documents had merit, but said that in some activities it would create an administrative burden beyond benefits. ISOO said it would encourage adoption of the recommendation at those agencies where it was economically feasible to do so and would seek further justification from those agencies where such a situation was not the case.

Two reporting items that ISOO believes may not be cost effective relate to the order's two basic objectives of classifying less information and declassifying it sooner. Without reasonably reliable information, neither ISOO nor anyone else can determine the extent to which those objectives are being met. Generally, there are two ways to collect the information needed by ISOO to make that determination. One method is to require 100-percent reporting by all agencies. For a large organization, such as DOD, this could be a costly method. The second method is to use some form of statistical sampling. Properly planned and executed, a statistical sample could provide nearly as good information as 100-percent reporting but at a much lower cost. Since effective oversight of the program is essential to ascertain the achievement of intended objectives, ISOO should work with the various agencies to develop cost-effective methods of gathering the needed information. Since the scope of our review did not include an evaluation of the financial implications involved in implementing our recommendation, we have modified the recommendation to provide for ISOO and the agencies to develop cost-effective methods of reporting program activity.

Because derivative classification accounts for about 95 percent of the tens of millions of documents classified annually, we believe that statistics related to that type of classification are important and should be reported. DOD has over 1,000 classification guides that are used by its derivative classifiers, which DOD estimated to be 170,000. The application of classification markings by

derivative classifiers requires judgment, based on the interpretation of instructions in classification guides and the use of information taken from source documents. DOD requires a classification guide for each classified system, program, plan, or project. The guides identify the information to be protected and the level of classification for specific items. Most information in DOD is classified on the basis of guides. Contrary to what ISOO said, new information on a subject is classified and withheld from the public. Our 1979 review of classified documents at 23 DOD offices showed that about 30 percent were derivatively classified on the basis of instructions included in classification guides. We believe that it is important for ISOO to monitor the amount of information that is classified originally and derivatively.

According to ISOO's annual report, there were about 241,000 derivative classifiers in the Government at the end of fiscal year 1979. In that report ISOO said that it would continue to encourage agencies to limit the number of derivative classifiers. It is difficult to comprehend how ISOO intends to monitor the success of its efforts, if all agencies are not required to periodically compile statistics on the number of derivative classifiers.

With respect to mandatory review requests, the complete reporting that ISOO referred to does not show the number of requests or appeals that are older than the respective 60- and 30-day requirements of the order. Our reviews have shown that many requests are substantially older than 60 days. We believe that agencies should be required to report the age status of all open requests and appeals; i.e., over 60 days, over 120 days, over 240 days, etc.

ISOO is incorrect in its statement that it has always required the reporting of classification infractions. The proposed reports for fiscal year 1980, sent to agencies in April 1980, did not contain any provision for reporting the type of classification infractions described on page 8. The proposed reporting will include only those infractions involving physical safeguards.

ISOO's approach to our recommendation for identifying derivative classifiers on the documents that they have classified indicates something less than a wholehearted attempt to improve control and instill a greater sense of accountability in the classifiers. We do not agree that adding the classifiers' names to the markings already required to be on the documents would create an administrative burden.



### DOD comments and our evaluation

On September 9, 1980, the Deputy Under Secretary of Defense, Policy Review, commented on our findings and recommendations (see app. II). DOD believed that our report implied that DOD was deceptive in understating the number of classification actions; however, it acknowledged that classification actions of the National Security Agency were omitted. DOD said that after a sampling of DOD activities was taken, it was discovered that the data base from which the sample was drawn did not contain all elements of the Security Agency. DOD further said that it told ISOO that data regarding its classification actions did not include the Security Agency because the agency was found to be unrepresentative in the unit identification code data base from which the sample was drawn. DOD told us that the reason for excluding the Security Agency from the data base sample was that Public Law 86-36 (approved May 29, 1959) prohibits the disclosure in unclassified reports of information that reveals the organization, functions, number of employees or their identities, or activities.

DOD defended its use of the Switch Network Automatic Profile System as being economical and sufficient to plot trend lines, even though it acknowledged that the statistics derived therefrom excluded sensitive compartmented information and other classes of documentation.

DOD questioned the usefulness of implementing our recommendation that ISOO require agencies to report the number of derivative classifiers. DOD said that "failure on the part of the derivative classifier to respect proper classification decisions is a failure in responsibility, not authority" and that for reporting purposes, a derivative classifier was defined as one who has a security clearance at a stated level and who is authorized to sign or approve official documentation of an organization. DOD did not agree that derivative classifiers should be identified on the documents they classify because the person signing a document becomes accountable for its content and classification. In addition, DOD said the recommendation would impose an additional administrative burden with no benefit to the information security program.

If Public Law 86-36 was the basis for omitting statistics on Security Agency classification actions, then ISOO should have been so informed, and ISOO's annual report for 1979 should

have contained a disclaimer to that effect. In our March 1979 report, we noted that the Security Agency had between 50 and 100 million classification actions a year. That means that its classification activity is probably greater than the combined total activity of all other components and agencies of the Government.

We do not agree with DOD that an improper derivative classification is a failure in responsibility. Our review of DOD facilities showed many instances where derivative classifiers improperly used authority, or used authority which they did not have, to classify documents. Furthermore, in many cases, the individuals who applied derivative classification markings, based on classification guides or source documents, were not the same individuals who signed the documents. We believe that the high incidence of classification infractions disclosed by our DOD review was partly due to the manner in which DOD handled the derivative classification process. We further believe that requiring the individuals who derivatively classify documents to be identified on those documents makes the individuals more conscious of the fact that they are accountable for their actions.

### CHAPTER 3

#### WAIVERS TO EXECUTIVE ORDER

#### REQUIREMENTS GRANTED BY ISOO

Executive Order 12065 and its implementing instructions provide that the Director of ISOO may issue waivers to requirements of certain provisions of the order. During the 17-month period, December 1, 1978, through April 30, 1980, ISOO granted the nine waivers that are summarized below. We believe that the waiver granted DOD and DOE in January 1980, involving portion marking, should be rescinded. That waiver is discussed after the summary.

#### Waivers Granted

<u>Date</u>	<u>Agency</u>	<u>Subject</u>
01/02/79	Environmental Protection Agency	<u>Marking.</u> Authorizes the use of the word "confidential" in a phrase used to mark business data furnished under the Toxic Substances Control Act. The Executive order prohibits the use of the words confidential, secret, and top secret in conjunction with other words.
01/19/79	DOD	<u>Portion marking.</u> Authorizes a one-time submission of three reports by the Secretary of Defense to the Congress without portion marking. Prohibits derivative classification of data in the reports.
07/20/79	DOD	<u>Annual inventory of top secret information.</u> Waives requirement for material held in a section of the Documents Division, Joint Chiefs of Staff.
08/03/79	CIA	<u>Portion marking.</u> Waives requirement for one class of documents.

<u>Date</u>	<u>Agency</u>	<u>Subject</u>
08/30/79	DOD and DOE	<u>Portion marking.</u> Waives requirement for naval nuclear propulsion information. Prohibits use of such data as basis for derivative classification.
09/12/79	National Security Agency	<u>Annual inventory of top secret information.</u> Waives requirement for sensitive, cryptologic information acquired, stored, and accessed through automatic systems.
10/20/79	All agencies	<u>Systematic review for declassification.</u> Extends the 10-year re-review requirement to 30 years for certain categories of intelligence information--involving foreign Government information, sources, and methods, and cryptology--that has already been systematically reviewed.
01/30/80	DOD and DOE	<u>Portion marking.</u> Waives requirement when document contains national security information covered by the Executive order and information covered by the Atomic Energy Act of 1954.
03/13/80	Bureau of the Census	<u>Marking.</u> Authorizes the use of the term "census confidential."

PORTION MARKING WAIVER  
TO DOD AND DOE

In January 1980 ISOO granted a waiver to DOD and DOE to the portion marking requirements of section 1-504 of the Executive order, with respect to documents containing national security information covered by the order and information on nuclear matters covered by the Atomic Energy Act of 1954. We

believe that the waiver should not have been given because it could result in the continued classification of information that should be declassified or the classification of information that should not have been classified in the first place.

Section 142 of the 1954 act (42 U.S.C. 2162) provides that the Atomic Energy Commission (now part of DOE) shall from time to time determine the data within the definition of "restricted data," which can be published without undue risk to national security, and shall declassify and remove such data from the restricted data category. The act defines restricted data as all data concerning the (1) design, manufacture, or utilization of atomic weapons, (2) production of special nuclear material, or (3) use of special nuclear material in the production of energy, but shall not include data declassified or removed from the restricted data category.

Data can be removed from the restricted data category when DOE and DOD jointly determine that such data, relating primarily to the military use of atomic weapons, can be adequately safeguarded as defense information. The data so removed from the restricted category is referred to as formerly restricted data. While formerly restricted data remains defense information, it cannot be made available to any nation or regional defense organization except pursuant to an agreement for cooperation.

DOE has established regulations covering the classification and handling of restricted and formerly restricted data. The regulations do not require that documents be portion marked to indicate which portions, paragraphs, or sections contain restricted or formerly restricted data or unclassified data. In addition, the regulations do not designate a specific time frame for removing, or reviewing for removal, data from the restricted category and placing it in the formerly restricted category. However, the regulations provide that DOE documents containing only regular national security information (no restricted or formerly restricted data) are to be classified and marked in accordance with the Executive order. The regulations further provide that documents containing both restricted and formerly restricted data and other national security information need not be portion marked.

A problem arose because DOD regulations provided for portion marking national security information and restricted and formerly restricted data and DOE regulations did not.

As a result, DOD agencies working with DOE in the Joint Atomic Weapons Publication System were unable to get DOE to portion mark joint publications.

On June 18, 1979, after reviewing the DOE regulations, ISOO requested that DOE, as a minimum, amend the regulations to require portion marking of national security information in documents that also contain restricted or formerly restricted data. ISOO told DOE that, preferably, all data in such documents should be portion marked, even though ISOO acknowledged that the Executive order recognized the preeminence of the 1954 Atomic Energy Act in matters pertaining to restricted and formerly restricted data. ISOO advised DOE that even the minimum amount of portion marking would facilitate the excerpting and review of information requested by the public under the provisions of the Freedom of Information Act and the mandatory review provision of the Executive order.

On July 9, 1979, DOE rejected ISOO's request. DOE said that it and its predecessor agencies had found that the portion marking of documents containing restricted or formerly restricted data, with or without national security information covered by the Executive order, "does not provide adequate security protection of such information, and, indeed, tends to place such information in increased jeopardy of unauthorized disclosure." DOE further stated that since the 1954 act contained more stringent protection requirements than the 1978 Executive order, it was obliged to follow the former in order to adequately protect restricted and formerly restricted data.

On July 17, 1979, ISOO informed DOE that its regulations must be changed to require portion marking of national security information in documents which also contain restricted and formerly restricted data. ISOO advised DOE that, pursuant to the Executive order, it could appeal the decision to NSC, in which case, its regulations would remain in effect for 1 year or until the appeal was decided, whichever occurred first.

The ISOO records did not indicate if DOE responded to ISOO or appealed the decision to NSC. However, it appears that ISOO, DOE, and DOD did discuss the issue.

In a November 19, 1979, memorandum to ISOO identifying major problems encountered in implementing the Executive order, DOD stated that the DOE practice of not portion marking

national security information in documents containing restricted and formerly restricted data was a source of difficulty and confusion in DOD which had been portion marking classified documents since 1964; when such documents were disseminated without portion marking, they tended "to thwart the achievement of precision in any subsequent derivative classification process." DOD further stated that the practice could result in (1) improper derivative classification and safeguarding, (2) extension of classification beyond the time necessary, (3) additional expenses, and (4) unclassified information being withheld from the public.

Nevertheless, on November 23, DOD formally requested that ISOO approve a waiver which would allow the Defense Nuclear Agency to deviate from the Executive order portion marking requirement, with respect to technical publications of the Joint Nuclear Weapons Publication System that contain national security information and restricted and formerly restricted data.

In a December 6 memorandum to NSC, ISOO advised NSC of the DOD request and of the planned issuance of a waiver, as an interim measure, until the issue with DOE was resolved. ISOO asked NSC to determine if DOE intended to appeal ISOO's July 17 decision and how long such an appeal would take to be resolved. ISOO also requested NSC's thoughts on the issuance of the limited waiver as an interim measure. As of June 30, 1980, NSC had not responded to ISOO.

On December 18, 1979, DOD requested ISOO's assistance in expeditiously resolving the problem because the Defense Nuclear Agency had stopped the printing and distribution of Joint Nuclear Weapons publications until the marking requirements could be observed or a waiver could be granted.

In a January 25, 1980, letter, DOE requested ISOO to reconsider its position. DOE asked ISOO to consider recent discussions and evidence presented regarding paragraph marking of documents containing restricted or formerly restricted data and national security information.

On January 30, ISOO advised DOD and DOE that it was granting a waiver from the portion marking requirements of the Executive order for all documents containing restricted or formerly restricted data and national security information. ISOO concluded that "because of the complexity and sensitivity of the subject matter, portion marking could,

in some instances, pose a security threat to the information." ISOO also advised DOD and DOE that any technical publications not portion marked must bear a notice substantially as follows:

"Pursuant to and in accordance with a waiver granted by the Acting Director, Information Security Oversight Office, this technical publication is not portion marked in accordance with Section 1-504 of Executive Order 12065. The use of information contained in this publication as a source for derivative classification is prohibited."

An ISOO official told us that ISOO decided to grant the waiver after ISOO had examined several documents that three DOE classifiers had portion marked. The ISOO official said that the three classifiers had marked the same documents differently. If such variances are commonplace, we believe that there may be a problem with the classifiers' comprehension of the classification guides or guidance and not in the portion marking requirements.

#### CONCLUSIONS

We believe that the waiver granted to DOD and DOE to the portion marking requirements of section 1-504 of Executive Order 12065 should be rescinded. We further believe that the reasons DOD cited in its November 19, 1979, memorandum, of what could result when portion marking is not observed, are valid reasons for requiring portion marking of national security information when it is contained in documents with restricted or formerly restricted data. We agree with ISOO's initial determination that it would even be advisable, though not required by the Executive order, to portion mark the restricted or formerly restricted data.

DOD has been portion marking classified documents since 1964. Portion marking, among other things, facilitates derivative classification, which is often required. The waiver granted DOD and DOE, however, prohibits derivative classification when documents containing restricted or formerly restricted data and national security information are not portion marked. If information in such documents has to be used in other documents, the information will have to be classified through the use of classification guides or by an original determination of the level of classification. Such a situation could produce differences in the classification designation, depending upon the individual.



## RECOMMENDATION

We recommend that the Administrator of General Services, in consultation with NSC, direct ISOO to rescind the January 30, 1980, waiver to the Departments of Defense and Energy concerning portion marking national security information contained in documents that also contain restricted or formerly restricted data.

## AGENCY COMMENTS AND OUR EVALUATION

### ISOO comments and our evaluation

ISOO told us that its decision to grant the waiver was made after it had carefully studied the problem and held extensive discussions with DOD and DOE. ISOO recognized the possibility that not requiring portion marking might result in the improper or unnecessary classification of information extracted from a document. However, it said that requiring derivative classifiers to use DOD/DOE classification guides should control instances in which this might occur and should materially assist in achieving consistency in the classification process. ISOO said that, in coordination with DOD and DOE, it would reexamine the waiver.

We are gratified that ISOO plans to reexamine the waiver. ISOO's statement that requiring derivative classifiers to use classification guides will preclude improper or unnecessary classification and assist in achieving consistency in the classification process appears to be illogical. If the individual who initiates a document has a problem portion marking it, is it logical to assume that the individuals who receive that document and need to extract portions can do so accurately and consistently using classification guides?

### DOE comments and our evaluation

On August 15, 1980, the Acting Controller of the Department of Energy commented on our findings and recommendations (see app. III). DOE believed that portion marking documents containing restricted and formerly restricted data and national security information posed a threat to the security of such information because it would allow derivative classifiers to rely on such markings, and errors could occur in the marking process. Such errors could result in restricted and formerly restricted data being handled (1) as unclassified, (2) at a lower classification level than appropriate, or (3) by individuals without appropriate clearances.

DOE said that the example referred to by the ISOO official (see p. 20) involved two highly knowledgeable technical personnel who were instructed to classify paragraphs out of context, and a third individual who reviewed and disagreed with some of their determinations. According to DOE, the disagreements arose not because of a difference in interpretation of classification policy, but because the third person was reviewing the paragraphs in context. DOE said that classifying a paragraph out of context means that classified associations between that paragraph and other paragraphs in the document or in other documents are not considered. DOE concluded that classified information could be obtained even when paragraphs were portion marked in context because of the association of information that was classified by different individuals and reviewers.

DOE did not agree with DOD's statement about the effects of not portion marking. (See p. 19.) DOE indicated that there were viable substitutes to portion marking to ensure that classified information is properly classified. DOE cited for example, using classification guides and requiring derivative classifiers to verify the information's current level of classification before it is derivatively classified. DOE did not believe that the absence of portion marking results in the extension of classification beyond the time necessary because, even when information is portion marked, the marked portions do not indicate how long each portion is to remain classified. DOE said that it was not advocating a requirement to indicate the duration of classification of each portion of a document for the following reason.

"We believe this would place an onerous burden on classifiers who are already required to devote more of their time to marking classified documents than seems necessary. Such attention to detail takes valuable time that could be used for carrying out their primary function (which virtually always is not classifying documents)."

DOE said that the report was not clear as to what additional expenses would be incurred, so it addressed the following three possible expenses

- issuing and maintaining classification guides,
- verifying the classification of extracted information, and

--reviewing a nonportion-marked document for public release or other purposes.

DOE also said that it was not clear how the lack of portion marking could be the cause of unclassified information being withheld from the public.

DOE thought that our recommendation was overly harsh and appeared to circumvent DOE's right to appeal any decision by ISOO to rescind the waiver.

We agree with DOE that portion marking can result in errors because derivative classifiers rely on such markings; however, allowing individuals other than the initiator of a document to determine the appropriate level of classification for information extracted from that document would seem likely to cause as many, and possibly more, errors because of differences in perspective. Furthermore, DOD has been portion marking national security information and restricted and formerly restricted data since 1964.

With regards to DOE's comments concerning the problem of classifying paragraphs out of context, DOD has provided for that problem in its regulations. The DOD regulations provide that in unusual circumstances, when a compilation of unclassified portions could reveal national security information, the unclassified portions may be classified, but must be supported by a written explanation for the classification.

We do not agree with DOE's evaluation of the four effects of not portion marking, as set forth by DOD. If the originator of a classified document, usually considered to be the most knowledgeable on the subject, marks the classified portions, such action would seem to reduce the possibility of error or inconsistency when portions of the document are subsequently extracted and derivatively classified by individuals, possibly less knowledgeable. Portion marking would negate the need for each derivative classifier to review a classification guide in order to determine the appropriate marking for each portion extracted, thus saving time and money. The classified portions could be declassified at the date specified for national security information instead of remaining classified for the extended periods provided for in the Atomic Energy Act for restricted and formerly restricted data. Portions of the document that are marked unclassified can be extracted and appear in other documents without any restrictions on dissemination.

We believe that DOE's statement (see p. 22) that classifiers already spend more time than necessary to mark documents may be the primary reason for DOE's opposition to portion marking. We do not believe that our recommendation is overly harsh. It was not intended to deny DOE nor does it deny DOE the right to appeal any action that might be taken by ISOO to rescind the waiver.

DOD comments and our evaluation

DOD told us that it continued to believe that portion marking achieves precision in any subsequent classification process. DOD was concerned that our reference to its November 1979 correspondence with ISOO gave the appearance that it acted in an ambivalent manner in opposing and then supporting the portion marking waiver, which it said was not the case. DOD clarified its position as follows.

"The waiver requested by the Department of Defense was to apply only to a single series of technical documents developed and published jointly by the Departments of Energy and Defense. The Department of Defense requested the waiver only after publication of these documents, vital to certain military logistics and operations, was delayed intolerably by the conflict in DOE and DOD policies and regulations governing portion marking."

## CHAPTER 4

### ISOO DENIED ACCESS TO RECORDS

Executive Order 12065 authorizes ISOO to make onsite reviews of the information security program at agencies that handle classified information and to require of each agency reports, information, and other cooperation, as necessary, to fulfill its responsibilities. The order allows agencies to deny ISOO access to specific categories of classified information which "would pose an exceptional national security risk." The Director of ISOO may appeal such denials to NSC.

Notwithstanding the provisions of the order, agencies have written directives which deny ISOO access to records other than the type specified in the Executive order. ISOO can be denied access to records

--originated by an agency other than the one being inspected and

--originated in some instances by the agency itself.

We believe that, except as specifically provided for in the Executive order, ISOO should not be denied access to classified records.

### AGENCY DIRECTIVES ON ACCESS TO RECORDS

DOD and CIA have issued directives which limit ISOO's review of their records. These directives base part of the access to records denial on section IV D of ISOO's implementing directive to Executive Order 12065. Section IV D, commonly referred to as the "third agency rule," states that

"Except as otherwise provided by section 102 of the National Security Act of 1947, \* \* \* classified information originating in one agency may not be disseminated outside any other agency to which it has been made available without the consent of the originating agency."

The implementing directive to Executive Order 11652, which preceded Executive Order 12065, contained a similar

provision. The Acting ISOO Director told us that the concept of the third agency rule had been in existence for many years. Its intent is to control unauthorized dissemination of classified information provided by one agency to another.

In a July 31, 1979, memorandum, CIA specified that any CIA information in the possession, custody, or control of another agency will not be made available to ISOO without prior CIA approval. The same procedures also applied to any information of another agency in the possession, custody, or control of CIA. CIA required its personnel to screen records before making them available to ISOO inspectors to determine if any information therein revealed sources and methods or constituted an exceptional risk. It further stated that information revealing intelligence sources and methods could be deleted, if necessary to protect sensitive information, from any document shown to ISOO personnel and that the entire document could be withheld if the remaining information was misleading or not meaningful.

CIA told us that it based its authority for such action on the National Security Act of 1947 which provides that the Director of Central Intelligence shall be responsible for protecting sources and methods from unauthorized disclosure. CIA also said that it offered either to send representatives to screen CIA documents at agencies where ISOO was reviewing documents or to make copies of the screened CIA documents available to ISOO at the CIA headquarters office.

In a January 2, 1980, memorandum, DOD informed its departments and agencies that because of the third agency rule, as specified in the ISOO directive, it would not permit ISOO inspectors access to classified documents originated by departments or agencies outside of DOD. DOD further directed its departments and agencies to use discretion in making certain DOD originated documents available to ISOO. DOD gave two examples: classified documents pertaining to the Strategic Arms Limitation Treaty and those that present options that have not yet been acted on by the heads of respective organizations.

In a February 15, 1980, letter to NSC, the Acting Director of ISOO proposed ground rules that ISOO would follow during its onsite inspections of NSC. Under those rules, NSC staff would screen information before it would be made available to ISOO inspectors. In addition, ISOO would have access to documents generated by the NSC staff

but not to records generated by other agencies in NSC's possession. If records were denied because of the third agency rule, the staff would provide a written, unclassified description of the information so that the ISOO inspectors could visit the agency originating the information to review the document. As of May 31, 1980, NSC had not responded to the ISOO letter.

#### IMPACT OF LIMITED ACCESS TO RECORDS

During calendar year 1979, ISOO began reviewing agency files during its onsite inspections to determine if the classification and declassification markings were correctly applied and whether documents were properly classified. ISOO also used the information to determine general trends and to verify statistical data agencies had reported to ISOO.

ISOO has, when allowed access to agencies' files, identified instances of noncompliance with the provisions of the order. We reviewed ISOO inspection reports and found the following instances where ISOO inspectors, with proper clearances for access to national security information, had been denied access to records.

- The Organization of the Joint Chiefs of Staff did not allow ISOO to review documents on a random basis because of the highly sensitive nature of the Organization's mission.
- The Immigration and Naturalization Service denied access to CIA documents in its possession and to its documents containing information extracted from CIA documents. The Service informed ISOO that CIA had instructed the Service not to disclose CIA information.
- NSC denied ISOO access to all classified documents from any source. ISOO has written NSC that ISOO should have access to the documents, but not to other agencies' documents. As of May 31, 1980, NSC had not responded to the ISOO letter.

In a February 1980 letter to NSC, the Acting ISOO Director stated that access to classified documents was essential for effective oversight and that blanket denial by major agencies decreased the effectiveness and credibility of the oversight function.

ISOO, in its first annual report, recommended to the President that support was needed where it had experienced access problems so as to arrive at an accommodation. The recommendation, however, did not indicate how this would be accomplished.

### CONCLUSIONS

Some agencies have issued directives that deny ISOO access to their files during onsite inspections. These denials are based on a section of ISOO's implementing directive that we believe is taken out of context. According to the directive, classified information cannot be disseminated outside an agency to which the information has been made available without the originating agency's consent. Agencies have interpreted this directive to include documents needed by ISOO to effectively do its job during onsite inspections.

During inspections, ISOO does not request, for retention, copies of classified documents originated by other agencies. It uses those documents only as necessary to review for compliance with the order. Without proper access, ISOO cannot readily determine if derivative classification and declassification markings are correctly applied or whether documents are properly classified.

The practice of denying ISOO access to records is contrary to Executive Order 12065 which requires agencies to make information available to ISOO, as necessary, to fulfill its oversight responsibility, except where such access would pose an exceptional national security risk. There are instances where documents from third agencies should be withheld during ISOO inspections because the documents contain intelligence data or information relative to sources and methods of collection. In those instances, the arrangements suggested by CIA for screening the documents before access is given to ISOO seem appropriate.

We believe, however, that the general practice of denying all third agency records to ISOO during its onsite inspections is contrary to the provisions of the Executive order and limits the effectiveness of the Oversight Office. We also believe that NSC should support ISOO in its attempt to carry out its oversight function.



## RECOMMENDATION

We recommend that the Administrator of General Services, in consultation with NSC, direct ISOO to revise section IV D of its implementing directive to clarify that the only records that can be denied to ISOO in carrying out its oversight function are those whose disclosure would pose an exceptional national security risk. Such revision, however, should also include special arrangements for ISOO to obtain access to those documents containing intelligence data or references to sources and methods that are needed to review derivative classifications.

## AGENCY COMMENTS AND OUR EVALUATION

### NSC comments and our evaluation

On August 25, 1980, the Staff Secretary of NSC advised us that since ISOO was providing a comprehensive response to our report, NSC's comments would be confined to topics directly affecting NSC. (See app. IV.) NSC fully supported ISOO in the discharge of its oversight function, but avoided actions that might convey the impression that NSC, rather than ISOO, was primarily responsible for oversight.

NSC said the earlier difficulties concerning an ISOO inspection at NSC were probably due to inexperience on both sides, and during a recent inspection, NSC granted ISOO full access to NSC's records. Consequently, NSC did not believe that it was necessary to establish the ground rules previously proposed by ISOO. NSC did not comment on our recommendation.

### ISOO comments and our evaluation

Although ISOO agreed in principle with our recommendation, it did not believe that the implementing directive should be revised because the access thus far denied to ISOO inspectors did not materially impede their ability to perform ISOO's oversight function. ISOO said that the question of whether the third agency rule applied to ISOO remained unresolved and that its application to ISOO in the past had caused "limited inconvenience" during inspections. ISOO further said that if the third agency rule should become a hindrance to ISOO's effective functioning, it would pursue clarification and, if necessary, amendment of the order to remove ISOO inspectors from the order's

scope. ISOO said that our "references to the fact that the ISOO staff was denied access to all classified documents from any source by the National Security Council (NSC) staff \* \* \* is an inaccurate statement."

Our review of ISOO inspection reports and correspondence indicated that access to records during ISOO inspections has been a problem. Because derivative classification comprises a major part of the documents classified by most agencies, we believe that ISOO cannot perform effective inspections at those agencies unless it is given access to the documents from which the derivative classifications are made. Without such access, ISOO cannot determine if the information taken from the documents of agencies, other than the one being inspected, has been properly classified and marked. In our opinion, ISOO appears to be backing off from the strong oversight role assigned to it by the Executive order.

Our statement about NSC denying ISOO access to all classified documents is not inaccurate. In a November 27, 1979, letter to NSC, the former ISOO director, in referring to a recent ISOO inspection, made the following statements.

"There is one aspect of the visit with which I am particularly concerned--the NSC Staff position that no classified documents from any source would be made available for review. This position is inconsistent with Section 5-202(h) of the Order and places ISOO in an untenable position." (Under scoring supplied.)

According to the report of a more recent inspection of NSC in July 1980, ISOO did not encounter any access to records problems.

#### DOD and DOE comments and our evaluation

Neither DOD or DOE agreed with our recommendation. Both agencies viewed ISOO inspections as involving only reviews of documents classified originally by the agencies or on the basis of instructions in classification guides. Neither agency could see a valid reason for ISOO to review the documents of other agencies in order for it to carry out its oversight function. Both DOD and DOE told us that they thought it unlikely that one agency, in possession of a classified document from another agency, could determine whether access to the document would pose an exceptional risk to national security.

We clearly state on page 27 that ISOO needs to review the documents of other agencies to determine if information taken from those documents is properly classified (derivatively) and marked. Our 1979 review of classified documents at 23 DOD offices showed that over 50 percent of the documents classified by those offices were derivatively classified based on information included in other classified documents. Because of the volume of documents derivatively classified in this manner, ISOO should have access to the documents of other agencies to ensure that the agencies being inspected are adhering to the requirements of the Executive order, implementing instructions, and classification designations on the documents used for derivative classification.

We agree that it might be difficult for one agency to determine whether release of another agency's classified document would pose an exceptional risk to national security. However, since the Executive order, in defining the requirements for use of the three levels of classification, only uses "exceptionally grave damage to the national security" when the top secret level of classification is used, we believe that information classified as top secret may have been the type of information that agencies are authorized to withhold from ISOO. We believe that ISOO should also consider clarifying this point.



General Services Administration  
Information Security Oversight Office

Washington, DC 20405

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**AUG 22 1980**

Mr. R. W. Gutmann  
Director  
Logistics and Communications Division  
United States General Accounting Office  
Washington, D. C. 20548

Dear Mr. Gutmann:

Thank you for the opportunity to reply to your letter of July 23, 1980, addressed to the Administrator of General Services, in which you solicit the views of the General Services Administration on your draft report to the Congress entitled, "Improved Executive Branch Oversight of the National Security Information Classification Program." The Administrator has asked that I, as Director of the Information Security Oversight Office (ISOO), provide you with the views of this agency on the draft report.

I welcome the opportunity to provide comments on this study of ISOO's efforts to oversee executive branch implementation of the information security program established by Executive Order 12065. Moreover, I am encouraged by the tone of your draft report which indicates improvement in oversight of the program as compared with the findings in your report on monitorship of the program by the Interagency Classification Review Committee under the superseded Executive Order 11652.

I agree with your assessment that oversight of the program improved during the first year of operations of ISOO. I particularly note improved agency procedures for administering the program, a greater aptitude toward openness and public accessibility, and the very few complaints concerning the program addressed to this office by members of the public. I appreciate the assistance of GAO as ISOO seeks further improvement in the future.

Enclosed are the comments of this office to the recommendations for improvement contained in your draft report, as well as ISOO's reaction to certain inaccuracies within it. I will be most happy to meet with you or your representatives to discuss these comments should you desire to do so. I would welcome the opportunity to review and comment upon any future draft of the GAO report. I can be reached at 633-6880.

Sincerely,

A handwritten signature in cursive script that reads "Steven Garfinkel".

STEVEN GARFINKEL  
Director

Enclosures

ISOO POSITION PAPER  
RESPONSE TO THE DRAFT OF A PROPOSED GAO REPORT  
ENTITLED  
"IMPROVED EXECUTIVE BRANCH OVERSIGHT OF THE  
NATIONAL SECURITY INFORMATION CLASSIFICATION PROGRAM"  
JULY 1980

Introduction

The General Accounting Office (GAO) has submitted to several agencies of the executive branch for review and comment a draft of a proposed GAO report entitled, "Improved Executive Branch Oversight of the National Security Information Classification Program." The draft report concludes that most recommendations made in its March 9, 1979 report on the Government's national security information classification program pertaining to monitorship were undertaken during the first year of operation by the Information Security Oversight Office (ISOO). Further, it concludes that oversight of the program has improved as a result of the implementation of these recommendations. Notwithstanding these favorable conclusions, the report indicated that in some instances ISOO did not take necessary actions to assure effective agency compliance with the Order. The proposed report offered only four specific recommendations for improvement of monitorship of the program. ISOO's comments on these recommendations are stated below. Included in an appendix to this position paper are additional recommendations for editorial and other changes which we believe will improve the validity, accuracy and usefulness of the report.

RECOMMENDATION: Require agencies to submit complete reports for (1) classification actions, (2) declassification categories assigned to information, (3) mandatory review requests and appeals, (4) the number of individuals who classify information, and (5) classification infractions.

ISOO COMMENT: It has always been the policy of the ISOO to obtain the most complete data from agencies consistent with the value of those data (as a gauge for adjudging program implementation) when compared with the cost to the taxpayer for collection. Decisions for the establishment or ISOO reporting requirements have been made only after lengthy discussions of advantages and disadvantages of each course of action with the Interagency Information Security Committee, statistical analysts, and members of the GAO team. These discussions have resulted in a balance of interests, i.e., ISOO and public interests in obtaining information and agency interests in keeping collection costs at a reasonable level.

Because it is information that is classified and not documents, ISOO has required agencies to report an accurate count of the original classification decisions, and to provide only an estimate of the number of derivative decisions. Since in a derivative action the classifier only applies markings to information previously classified by an original authority, no new information is being withheld from the public by such action. It is primarily instances of classification of new information (original classification actions), that serve as a basis for adjudging agency compliance with the provisions of the Order.

ISOO reporting instructions require that each original classification action be reported except in a very limited number of agencies in which ISOO approval has been given for utilizing sampling systems. Such approval has only been granted in those cases in which the volume of material generated or the dispersion of activities is such that the overall value in gathering the information on an action-by-action basis does not warrant the very significant costs that would be involved.

The draft GAO report singles out the fact that statistics of the National Security Agency (NSA) were not included in DoD's submission to the ISOO. While this fact is true, to our knowledge no conscious effort was made to exclude NSA activities from the sample; they simply were not among the randomly selected activities included. We understand, however, your concern that a major classifying activity of the Department of Defense was not included in the sample. We will investigate the possibility of acquiring actual data from that activity or at least a sampling of its classification activities to determine the actual impact of the omission.

Similar rationale applies to GAO comments regarding the complete reporting of declassification categories assigned to information. It is the assignment of declassification categories to original classification actions that will have an impact on the availability of information to the public. Derivative classifiers are bound by Executive Order 12065 to honor the classification and declassification decisions of those who originally classify information used as a basis for derivative classification. There is no latitude for changing such decisions unless the original authority agrees to such change. It is the ISOO opinion that the additional gathering of declassification information on derivative actions would not warrant the expense that would be involved.

Concerning the GAO recommendation that complete reporting of mandatory review requests and appeals be required, such is the current policy of the ISOO. ISOO requirements have always included the mandatory reporting of the number of cases that required over 30 or 60 days for completion of action. In addition, agencies are required to report the number of cases carried forward from the previous year, new cases received, decisions to declassify, cases carried forward to the next reporting period and an estimate of the total pages reviewed. A detailed review of agencies' programs for mandatory review has been and will continue to be a major item in ISOO's inspection program. ISOO fully appreciates that responsive action by agencies on mandatory review requests and appeals is a major factor in building and maintaining public credibility in the Government's information security program.

In its first reporting requirements during a five month test period in 1979 the ISOO required agencies to report both the number of original classifiers and derivative classifiers. The latter was included as a one-time requirement to determine, at a given point in time, the number of individuals who were authorized to apply derivative markings. A review of the reporting requirements indicated that the exigencies of program continuity would not allow significant deviations from this one-time figure. These deviations would not warrant the cost to gather the data. A decision was made to continue the requirement to report the number of original classification authorities and to concentrate on limiting this number in the hopes of controlling classification of information in the first instance.

Concerning GAO comments regarding the reporting of classification infractions, the ISOO has always required the reporting of infractions to include overclassification, underclassification, misapplication of time limits, classification without authority, improper destruction unauthorized access, improper storage, unauthorized reproduction, mismarking, and unauthorized transmission. We will continue to do so.

RECOMMENDATION: The Administrator of General Services should direct the ISOO to revise its implementing directive to require that personnel who apply derivative classification markings be identified on the documents.

ISOO COMMENT: The policy of requiring identification of derivative classifiers on the documents they create was considered fully during the development of Executive Order 12065 and the ISOO implementing directive. It was the decision at that time that such a requirement should not be placed into effect. It has been the experience of the ISOO during inspections of agency information security programs that the identification of the individual who made the derivative classification decision can usually be determined from the file copy or record maintained by the office creating the derivative document. Further, ISOO Directive No. 1 provides that, in the absence of the identification of an official in the "Classified By" line on a classified document, the signer or approver is assumed to be the classifying authority and is responsible for the classification decision or the decision to apply the derivative markings.

ISOO agrees, nevertheless, that GAO's proposal does have merit. However, under some circumstances and in some activities it could create an administrative burden beyond benefits that might be derived by its adoption. ISOO will encourage the adoption of the proposal in those agencies in which the organization, dispersion, administrative practices and procedures, and volume of material generated would make the policy economically feasible. We will further seek a justification from those agencies or offices in which this would not be the case.

RECOMMENDATION: Rescind the waiver to the Departments of Defense and Energy concerning portion marking national security information contained in documents that also contain Restricted or Formerly Restricted Data.

ISOO COMMENT: The ISOO decision to grant a waiver from the portion marking requirements for national security information (NSI) contained in

documents also containing Restricted Data or Formerly Restricted Data (RD/FRD) was made only after careful study of the problem and extensive discussions with both the Department of Defense and the Department of Energy. Based on those discussions and examination of materials that had been portion marked by knowledgeable experts of the Department of Energy, it was apparent that even these experts had difficulty agreeing upon the classifiability or level of classification of the highly technical and complex information involved. It was equally apparent that less highly trained individuals would have even more difficulty in portion marking such material and the chances for inadvertant disclosure of extremely sensitive information essential to our national security would be increased. Thus, at that time it was the decision of the ISOO that the risks to the national security by requiring portion marking outweighed the advantages of portion marking.

ISOO does recognize the possibility that not requiring portion marking may result in the improper or unnecessary classification of information extracted from a document with a mix of NSI and RD/FRD. To control instances in which this might occur in derivative applications, the ISOO agreed to the waiver with the proviso that mixed documents not portion marked must contain a statement prohibiting the use of the document as a source for derivative classification. As a result, derivative classifiers will be forced to use approved DoD/DOE classification guides which should materially assist in achieving consistency in the classification process.

Despite our prior conclusion in this matter, ISOO will fully re-examine the waiver in coordination with the Departments of Defense and Energy. Pending the outcome of that examination, the waiver will remain in effect.

**RECOMMENDATION:** Revise Section IV D. of the ISOO implementing directive to clarify that the only records that can be denied to ISOO in carrying out its oversight function are those whose disclosure would pose an exceptional national security risk.

**ISOO COMMENT:** While the ISOO agrees in principle with the GAO position that ISOO should be denied access only to classified records that would pose an exceptional national security risk, the access denied thus far to ISOO analysts has not materially impeded the ability of the office to perform its oversight function. Actual inspection of agency documents is accomplished on a random sampling basis. Such a procedure permits the ISOO to determine general trends in the agency as they apply to the classification, declassification and marking of national security information. The ISOO recognizes that in several of the major agencies there is some information involving very sensitive programs and systems to which access must be limited. This is particularly true for intelligence sources, methods and operations, contingency plans and the like. When the occasion has required it, procedures have been developed jointly by the agency concerned and the ISOO to screen information prior to ISOO inspection. Such screening of information does not preclude ISOO analysts from evaluating agency implementation because a variety of other classified information is made available for their uninhibited review.



While we support the theory of maximum possible access by ISOO analysts, we also feel there is a valid need for the restrictions imposed on agencies by the so-called "third agency rule." As stated in the GAO report, it is a positive control over unauthorized dissemination of another agency's classified information by the recipient agency. Whether the third agency rule applies to ISOO remains unresolved. Its application to ISOO in the past has caused limited inconvenience to its analysts when they come across second agency material during an inspection. It has not precluded the ISOO from reviewing the material in the originating agency (except in limited instances wherein the ISOO agreed that access would pose an exceptional risk to the national security).

Despite the existence of the third agency rule, ISOO analysts have, in most instances, been afforded unlimited access to information needed by them to accomplish their oversight role. This has been true even in highly sensitive agencies such as the Central Intelligence Agency, the Defense Intelligence Agency, the National Security Agency, and the Office of the Joint Chiefs of Staff. The GAO report includes references to the fact that the ISOO staff was denied access to all classified documents from any source by the National Security Council (NSC) staff. This is an inaccurate statement. There was never a complete cut-off of information and, in my opinion, what problems which may have existed were caused by a lack of communication. From July 14 through 16, 1980, an in-depth review and inspection of the NSC staff information security program was conducted by ISOO analysts. During the inspection ISOO analysts were afforded unprecedented and unimpeded access to all facets of the program including classified documents and material. Any problems which may have existed previously were more than resolved. I am enclosing for your information a copy of the inspection report for that inspection as well as a letter to the NSC Staff Secretary giving my assessment of the inspection.

Until such time as the third agency rule affects the ability of the ISOO to perform its oversight function effectively, it is my opinion that it should remain as written to serve as a deterrent to the unauthorized disclosure of national security information. If it should ever become a hindrance to ISOO's effective functioning, I will pursue the clarification and, as may become necessary, the amendment of the Order to remove ISOO inspectors from its scope.



POLICY REVIEW

THE DEPUTY UNDER SECRETARY OF DEFENSE  
WASHINGTON, D. C. 20301

In reply refer to:  
I-09152/80

SEP 1980

Mr. R. W. Gutmann  
Director  
Logistics and Communications Division  
United States General Accounting Office  
Washington, D. C. 20548

Dear Mr. Gutmann:

This is in reply to your July 23, 1980 letter to Secretary Brown concerning your draft report to the Congress on "Improved Executive Branch Oversight of the National Security Information Classification Program" (Code 941204)(OSD Case 5493).

The Department's comments on the issues and recommendations contained in the draft report are enclosed. We trust that these comments will be reflected in your final report.

Sincerely,

Daniel J. Murphy  
Admiral, USN (Ret.)

Enclosure

DEPARTMENT OF DEFENSE COMMENTS  
CONCERNING UNITED STATES GENERAL ACCOUNTING OFFICE DRAFT REPORT 941204,  
"IMPROVED EXECUTIVE BRANCH OVERSIGHT OF THE NATIONAL SECURITY INFORMATION  
CLASSIFICATION PROGRAM" (OSD CASE # 5493)

Chapter 2 - Classification Action (page 10)

This section of the draft report that discusses DoD statistics submitted to the Information Security Oversight Office (ISOO) is unduly provocative. The General Accounting Office makes the conclusory statement that "The Department of Defense... continues to understate its classification activity." The Department of Defense takes exception to the implication that with deceptive purpose it understates the number of its "classification actions."

Due to the prohibitive cost of actually counting all the Department's classified documents during the 1979 reporting period established by the ISOO, the Department's information security management officials sought out a Defense activity that was qualified to design a statistically sound sampling method for determining "classification action" or classified document data that would be feasible from a cost viewpoint and acceptable to the ISOO. Such a sampling methodology was developed, proposed to the ISOO which validated its integrity, and subsequently approved. Only after the results of the sampling were evaluated and projected to the Department as a whole was it discovered that the data base from which the sample was drawn did not contain all elements of the National Security Agency. It should be noted that the sample was drawn from a personnel-oriented data base. The reason for excluding the National Security Agency from such a base is that P.L. 86-36 provides that information in unclassified reports which reveals the organization, functions, numbers of employees or their identities, or activities of the National Security Agency may not be disclosed.

In furnishing data regarding its "classification actions" to the ISOO, the Department acknowledged the National Security Agency omission by stating that "the results do not reflect data concerning the National Security Agency because it was found to be unrepresented in the Unit Identification Code (data) base from which the sample was drawn."

Data from the Department's "Switch Network Automatic Profile System" (SNAPS), even though it does not include Sensitive Compartmented Information, is more than adequate for the purpose of plotting a trend line. There is no reason to expect that other classes of documentation, such as ordinary correspondence, or other kinds of information, such as that handled by the National Security Agency, would have a significant impact on the trend line. If the National Security Agency's "classification actions" were included, the trend line would be higher but its contours would probably remain essentially unchanged.

The Department of Defense does not endorse the GAO belief that the ISOO should rescind its approval of the Department's utilization of SNAPS as an economical means of producing statistical data regarding "classification actions" which will produce an interesting trend line over a period of time - but a trend line that will not be susceptible to information security management control or influence.

Apparently the General Accounting Office persists in its conviction that knowledge of the actual total number of classified documents is useful in monitoring implementation of and compliance with the Executive Order. The draft report indicates that the GAO believes that the only way to evaluate whether the amount of information being classified is being reduced is to accumulate and compare, over a period of years, statistics on the number of "classification actions." But it remains the experience of this Department that statistics concerning the number of "classification actions" or documents classified at particular levels of classification for particular periods of time do not provide a data base that is useful to this Department or to the ISOO for measuring progress or to improve the Information Security Program. Even if the precise total number of documents classified by the Department of Defense could be obtained without incurring unacceptable costs, such data would merely reflect an increase or decrease of necessary communications brought about by world events, emergency actions, etc.

One item of information contained in a document classified at the highest levels of the Government may well result in hundreds of classified orders, messages and reports, each of which is derivatively classified on the basis of that single classified document containing that single item of originally classified information. The number of documents in which that single item of classified information exists is not germane to any useful concern for the quality or quantity of original classification decisions.

#### Chapter 2 - Individuals Who Classify Information (page 13)

The draft report states the GAO belief that the ISOO should require agencies to report the total number of people authorized to classify information on an original and derivative basis. There is no question with respect to reporting original classification authorities. However, the Department of Defense questions the usefulness of counting derivative classifiers.

Executive Order 12065 clearly requires that persons who apply derivative security classification markings shall respect original classification decisions. A failure on the part of the derivative classifier to respect proper classification decisions is a failure in responsibility, not authority. Counting derivative classifiers will not produce more responsible derivative classification actions.

Last year the Department estimated that it had 169,673 "derivative classifiers" and reported that number to the ISOO. For that purpose a "derivative classifier" was defined as one who has a security clearance at a stated level and is authorized to sign or approve official documentation of an organization. In fact, the number of "derivative classifiers" is a number not subject to influence or control by information security management - rather it is a numerical reflection of the size, organization, dispersion, and mission of an agency. Data regarding the number of "derivative classifiers" within the Department of Defense would show that this Department is the largest in the United States Government and has a mission closely related to the national security. Effective implementation of Executive Order 12065 has no impact on these numbers.

Identification of Personnel Who Apply Derivative Markings (page 14)

The draft report recommends that personnel who apply derivative classification markings be identified on the document. The General Accounting Office apparently perceives a lack of accountability on the part of derivative classifiers who make use of security classification guides. That perception is unfounded and ignores common business practice as well as long standing Defense policy: the person who signs a document thereby becomes accountable for both its content and derivative classification. That such an individual does not possess original classification authority does not diminish his or her accountability or responsibility for its content or derived classification.

Thus, the Department of Defense cannot support the GAO position that personnel who apply derivative classification markings should be identified on documents inasmuch as it would impose an additional administrative burden with no benefit to the Information Security Program.

Chapter 3 - Portion Marking Waiver to DoD and DOE (page 21)

On page 21 of the report reference is made to a Defense position provided to ISOO in support of the portion marking requirement. This is followed closely by reference to a DoD request to ISOO to approve a waiver of the portion marking requirement for a certain class of documents containing Restricted or Formerly Restricted Data. From this discussion it would appear that the Department acted in an ambivalent manner in opposing and then supporting the portion marking waiver. This is not the case. The waiver requested by the Department of Defense was to apply only to a single series of technical documents developed and published jointly by the Departments of Energy and Defense. The Department of Defense requested the waiver only after publication of these documents, vital to certain military logistics and operations, was delayed intolerably by the conflict in DOE and DoD policies and regulations governing portion marking.

The Department notes that the draft report indicates on page 19 that DoD regulations provide for portion marking national security information. The Department's Information Security Program Regulation also provides for portion marking of classified information that is also Restricted Data or Formerly Restricted Data.

Chapter 4 - Agency Directives on Access to Records (page 27)

The draft report contains a paraphrase of a January 2, 1980 memorandum to the several DoD Components concerning the "third agency" rule and access by ISOO staff members during the course of on-site inspections. While the paraphrase is accurate enough, it does not convey the full message of the memorandum, i.e., to facilitate ISOO inspections, cooperate with the ISOO inspectors, and ensure that accomplishment of the ISOO mission is not obstructed. The Department would not object to inclusion of the January 2, 1980 memorandum in the final report as it is believed that it demonstrates the Department's concern for a viable ISOO monitorship program and awareness of the need for proper application of the "third agency" rule.

The draft report indicates that because the ISOO was denied access to some classes of classified information it was unable to accomplish its monitorship role in an effective manner. There is nothing in this Department's experience to support this conclusion. As a practical matter, the ISOO can accomplish its on-site inspections without access to any one, or even several, particular subject matter areas. ISOO inspection of a wide range of classified documentation generated by a particular DoD Component is more than sufficient to provide a sound basis upon which to judge the adequacy of the classification and marking procedures. ISOO inspection of another agency's classified documentation or information in the possession of the agency being inspected is not germane to evaluating the inspected agency's Information Security Program.

The Department of Defense does not agree with the stated GAO belief that the denial of some records to ISOO during its on-site inspection is contrary to the provisions of the Executive Order or that such denial limits the effectiveness of the ISOO.

The Department's comments regarding the specific recommendations set forth in the draft report follow.

GAO Recommendations

---The Administrator of General Services, in consultation with the National Security Council, should direct the Information Security Oversight Office to require agencies to submit complete reports for (1) classification actions, (2) declassification categories assigned to information, (3) mandatory review requests and appeals, (4) the number of individuals who classify information, and (5) classification infractions.

DoD Position

The Department of Defense opposes this recommendation to the extent that it would result in a requirement for generating and reporting at great expense statistical data that is only generally informative or cannot be used by the Department of Defense or by the ISOO to monitor progress or improve the effective implementation of Executive Order 12065. The Department of Defense does not interpose objection to reporting to the ISOO data from SNAPS which has proven consistent with the sampling method approved in 1979. Further, there is no objection to reporting data as required by ISOO letter dated 2 April 1980 concerning classification infractions, original classification authorities, and mandatory review requests and appeals.

GAO Recommendation

--- The Administrator of General Services, in consultation with the National Security Council, should direct the Information Security Oversight Office to revise its instructions to require that personnel who apply derivative classifications markings be identified on the documents.

DoD Position

The Department of Defense objects to this recommendation if it is intended to require distinctive but redundant, and therefore unnecessary, identification of the derivative classifier. As previously noted, that person is the one who signed or approved the document. To require redundancy in this area adds nothing, but unnecessary cost, to effective monitoring of the Information Security Program.

GAO Recommendation

--- The Administrator of General Services, in consultation with the National Security Council, should direct the Information Security Oversight Office to rescind the waiver to the Departments of Defense and Energy concerning portion marking national security information contained in documents that also contain Restricted or Formerly Restricted Data.

DoD Position

The Department of Defense continues to believe that portion marking achieves precision in any subsequent classification process.

Recommendation

The Administrator of General Services, in consultation with the National Security Council, should direct the Information Security Oversight Office to

revise Section IV.D. of its implementing directive to clarify that the only records that can be denied to ISOO in carrying out its oversight function are those whose disclosure would pose an exceptional national security risk.

DoD Position

The Department of Defense objects to this recommendation for the reasons already stated. Further, this recommendation is seriously flawed in that, for example, a DoD possessor of a Central Intelligence Agency (CIA) classified document is not in a position during an ISOO inspection to determine whether the CIA considers that access to the particular document would pose an exceptional national security risk. Only the CIA could make such a judgment. The same access constraints on CIA would prevail for Defense documents, if the situation were reversed. Thus far, DoD application of the "third agency" rule has not, to our knowledge, affected adversely any ISOO oversight reviews of any element of the Department of Defense.





**Department of Energy**  
**Washington, D.C. 20585**

**AUG 15 1980**

Mr. J. Dexter Peach  
Energy and Minerals Division  
U.S. General Accounting Office  
Washington, D.C. 20548

Dear Mr. Peach:

We appreciate the opportunity to review and comment on the GAO draft report entitled "Improved Executive Branch Oversight of the National Security Information Classification Program", dated July 1980.

While the Department of Energy (DOE) clearly supports efforts to improve the National Security Information Classification Program, serious concern has been raised within the Department regarding two recommendations of the draft report. Specifically, (1) the recommendation to rescind the waiver to the Departments of Defense and Energy concerning portion marking of National Security Information (NSI) in documents that also contain Restricted Data (RD) and Formerly Restricted Data (FRD); and (2) the recommendation to revise Section IV D. of the Information Security Oversight Office's (ISOO) directive to clarify that only those records that can be denied to ISOO in carrying out its oversight functions are those whose disclosure would pose an exceptional national security risk.

With respect to (1), the DOE believes that portion marking of documents containing Restricted Data and/or Formerly Restricted Data in addition to National Security Information poses a threat to the security of such information (i.e., RD and FRD). This is because Restricted Data and Formerly Restricted Data must be handled under special controls dictated by the Atomic Energy Act and may not be automatically declassified or even downgraded. The information is under continuous review by the DOE and any change in classification policy related to such information is promptly provided to classifiers in specific changes to classification guides.

Portion marking of so-called mixed documents (i.e., those containing RD/FRD in addition to NSI) could allow derivative classifiers to rely on such markings. Errors can, and have, occurred when people portion mark documents. In the use of mixed documents, such errors could result in RD/FRD being handled as unclassified, being handled at a lower classification level than appropriate (i.e., Confidential vs. Secret), or persons without appropriate clearance having unauthorized access to RD. Since RD/FRD concerns nuclear weapons or the production of special nuclear materials, this is a particularly major concern in light of the importance to the national security of preventing the proliferation of nuclear weapons capabilities. We believe it is proper to continue to exercise the broad constraints on handling documents which result from the regulations requiring protection of the entire document as RD rather than individual paragraphs as in the case of portion marking.

The risk to the security from the compromise of RD/FRD, we believe, outweighs significantly any small advantage that might be gained by portion marking such documents. Therefore, we believe that the ISOO waiver from portion marking mixed documents should be sustained. In this regard, detailed comments on Chapter 3 are enclosed for your consideration.

DOE's concern with recommendation (2) lies in the fact that should the ISOO request access to another agency's document in the possession of the DOE, implementation of this recommendation would require, in effect, that the DOE make a judgment as to whether such access (to another agency's document) would pose an "exceptional national security risk" pursuant to E.O. 12065. By the same token, other agencies would have to make a similar judgment with regard to ISOO access to DOE documents in their possession. We do not believe that an agency is in a position to make such judgments regarding another agency's documents. In addition, the DOE does not see a valid reason for the ISOO to inspect other agency documents in the DOE's possession when the purpose of the inspection is to examine DOE records. While such inspection would permit a minimal "spot check" of another agency's records, the DOE believes that the concern outlined above is a clearly overriding factor.

We appreciate the opportunity to comment on this draft report and trust you will consider our comments in preparing the final report.

Sincerely,



P. Marshall Ryan  
Acting Controller

Enclosure

DETAILED DOE COMMENTS ON PORTION MARKING WAIVER COMMENTS MADE  
IN THE GAO DRAFT REPORT "IMPROVED EXECUTIVE BRANCH OVERSIGHT  
OF THE NATIONAL SECURITY INFORMATION CLASSIFICATION PROGRAM",  
DATED JULY 1980

(1) p. 23, Second Paragraph

The documents referred to here had been reviewed first by two highly knowledgeable technical personnel. The nature of their disagreements was not in interpretation of classification policy, but in what a specific paragraph reveals. They had been instructed to mark the classification of paragraphs out of context. The third person, also a highly knowledgeable technical reviewer, disagreed with some of the determinations of the first two. These disagreements arose not because of a difference in interpretation of classification policy, but because the third person was reviewing the paragraphs in context. Thus, we believe that the conclusion reached in the subject paragraph, that "there may be a problem with the classifiers' comprehension of the classification guides or guidance and not in the portion marking requirement" is not demonstrated.

When one classifies a paragraph out of context, he/she overlooks possible classified associations between that paragraph and other paragraphs in the document or in other documents. When a person classifies paragraphs in context, a much more complex undertaking, he/she insures that classified associations between individually unclassified items are taken into account. Even when paragraphs are portion marked in context, there is still the possibility that different reviewers of different versions or of different documents on the same subject may classify different segments of a classified association. If this happens, when the documents are sanitized, then information from the one can be associated with information from the other to obtain classified information.

(2) p. 23, Last Paragraph

In the second sentence of this paragraph, four items are mentioned that allegedly "could result when portion marking is not observed". Each of these will be addressed in the following.

"(1) improper derivative classification and safeguarding"

There are several points that can be made about this concern. First, E.O. 12065 provides that (Section 2-102(b)) "Persons who apply such derivative classification markings shall: ... verify the information's current level of classification so far as practicable before applying the markings". Therefore, the derivative classifier should contact

the originator of the source documents, so far as practical, if there is any doubt regarding the classification of extracted information. The Executive Order also provides that (Section 2-102(a)) derivative classifiers "respect original classification decisions". This means that they must ensure that if classified information is derived from a document, the derived information is classified and safeguarded the same as specified in the source document.

Even if classified documents are "portion marked", that does not necessarily mean that a derivative classifier will be able to unambiguously derive the proper classification of extracted information from the portion markings of the source document. In practice, the smallest portion has generally been considered a paragraph or a subparagraph. Often, paragraphs, and even subparagraphs, consist of many sentences which cover more than one concept. In such cases, the only classified item may be a single reference to a concept, and if the derivative classifier is not familiar with classification policy in the area of concern, he/she would probably not be able to determine what is classified about the paragraphs. If it is not practical to do so, he/she would not contact the originator of the source document for further guidance. He/she would then be compelled to classify his/her derivative document the same as the portion from which it was extracted, even if the classified concept was not extracted. This would thus tend to lead to over-classification, possible proliferation of improper classification through collaterally classified documents, and, as expressed in concern number (4) "unclassified information being withheld from the public". It is our experience that this situation is the rule, rather than the exception.

We believe that the concern raised here can be alleviated by the issuance of detailed classification guidance for use by derivative classifiers. Within the DOE, we now have, and have had for many years, an extensive system of classification guides for the use of classifiers. These guides are constantly being reviewed and revised to reflect current classification policy and policy changes. Classifiers are notified of such changes as much as possible on a timely basis. This is one area we believe classification guides are superior to derivative classification through the extraction process. The reason for this is that, whereas changes of classification policy and guidance in classification guides can easily be issued promptly to derivative classifiers, such changes would not come to their attention on a timely basis, if at all, if their sole source of guidance is through the portion markings of the documents they use. Certainly if a document to be used for derivative classification is old, there is a possibility of proliferation of over- (or under-) classification through collateral derivative classification. This is particularly true when the specific national security concerns are dynamic (such as in the areas of nonproliferation, nuclear safeguards, and foreign relations matters).

"(2) extension of classification beyond the time necessary"

Since the duration of classification of information in specific portions of a document is not required to be specified with the portion marking (not even by the DOD), there is no way that a derivative classifier can determine what the duration of classification of extracted information should be without contacting the originator of the source documents. Of course, it can be assumed that such a duration would be less than or equal to that specified for the entire document. If the derivative classifier were to assume that the maximum time specified for the source document as a whole were applicable, then he/she likely as not would be specifying a duration of classification in excess of that necessary for the information extracted. (Incidentally, the duration of classification cannot be specified on a document containing Restricted Data and/or Formerly Restricted Data, since the declassification of such information is restricted by the Atomic Energy Act to certain high level DOE officials. Such information is under continuous review by the DOE (as required by the Atomic Energy Act) "in order to determine which information may be declassified and removed from the category of Restricted Data without undue risk to the common defense and security". A duration of classification for National Security Information incidentally contained in an RD or FRD document should not be placed on the document since such a marking could be misleading to custodians of the document. Premature declassification of an RD or FRD document would likely be harmful to our common defense and security.)

As another point in favor of classification guides, it should be noted that the guide is an ideal medium for the conveyance of the duration of classification to classifiers. When using a guide, a derivative classifier does not have to use guesswork when he/she is extracting information from a classified document. The guide on the subject at hand will specify not only what the classification level of the extracted information is, but also what the duration of classification is.

We are not advocating a requirement to indicate the duration of classification of each portion of a document. We believe this would place an onerous burden on classifiers who are already required to devote more of their time to marking classified documents than seems necessary. Such attention to detail takes valuable time that could be used for carrying out their primary function (which virtually always is not classifying documents).

"(3) additional expenses"

It is not clear from the report what "additional expenses" entail from not portion marking documents. We will address below the areas that we see as possibilities.

1. The expense of issuing and maintaining classification guides.

Such guides are mandated by E.O. 12065, Section 5-403: "Agencies with original classification authority shall promulgate guides for security classification that will facilitate the identification and uniform classification of information requiring protection under the provisions of this Order." Since such is the case, then guides are required to be issued (a concept we agree with), and the cost will be there anyway. It should not be used as a rationale for portion marking.

2. The expense of verifying the classification of extracted information.

The cost associated with using a guide is not expected to be much different from that incurred in relying on portion marking for guidance. In fact, it might be expected to be less for the former than for the latter when the derivative classifier must contact the originator of the source document for further guidance.

3. The expense of not using portion markings as criteria for sanitizing a document for public release or for other purposes.

As will be noted below, we believe that the practice of relying on portion markings for sanitizing a document could be dangerous, especially when there is a significant problem of classified associations. Be that as it may, however, it should be noted that, at least within the DOE, it is our policy and practice to completely review each classified document before it is declassified or sanitized. (The exception is when the document has been marked for automatic declassification and the date for declassification has passed.) We feel this is necessary for several reasons. First, it will help to take into account the possibility that the classifier of the document overlooked a classified association when classifying the document. Second, since our experience has shown that portion marking a document often leads to errors of marking, such errors will be caught in the review process. (It could go either way - overclassified portions could be downgraded or declassified, and underclassified portions could be upgraded.) Third, it ensures that any changes in policy since the document was classified are taken into account rather than blindly relying on the original determination for older documents, and will tend to assure that more unclassified information is made available. Fourth, the complete review of a document for sanitization will help to ensure that all sanitizations of copies of that document or of related documents will be consistent. (This is particularly of concern when half of a classified association is released and the remaining half retains the classification.)

As stated above, we see no real additional expenses resulting from not portion marking. As a matter of fact, there does appear to be additional expense in portion marking a document. This expense arises from the greater time required of the classifier since he/she must ensure that the document is correctly portion marked. This is to ensure that a derivative classifier using that document as a source does not extract a piece of information as unclassified when so (portion-) marked, if the classifier of the source document erred in marking his/her document. Within the DOE, classifiers are almost always highly paid technically qualified experts in a field. Classifying documents is only a security requirement placed on them to ensure that classified information they generate will be protected. It is not their primary function.

"(4) unclassified information being withheld from (sic) the public"

It is not clear how the lack of portion marking will be the cause of unclassified information being withheld from the public. Only classified documents are portion marked, and they are not, as a rule, available for public dissemination. Sanitized versions, consisting solely of the unclassified portions of the documents, are in general not prepared concurrently with the classified version for public dissemination. It normally is only upon request that a document is sanitized for public release. As we said before, the process of sanitization, at least in the DOE involves a complete review of the document, not just a removing of portion marked classified paragraphs. If solely the portion markings are relied upon for sanitizing a document, then there is a very real chance that classified information may be disclosed. This may happen if the classifier of the document erred in portion marking, or if the classifier overlooked a classified association, or if a classifier of one version of the document marked one portion of a classified association and another classifier did the same for the other part of the association in another version.

A complete review does have other advantages regarding the public disclosure of unclassified information. First, it would catch errors in the classification of portions that should not have been classified in the first place. Second, it would provide for declassification of formerly classified portions when the policy has changed to allow for this. Third, only the classified information would be deleted from portion marked classified paragraphs allowing the unclassified contents to be released. None of these types of releases would occur if the document was sanitized solely on the basis of the portion markings.

(3) p. 24, Second Paragraph

The assertion in the second sentence of this paragraph has been dealt with thoroughly in the foregoing discussions, and we will not address them again here.

However, the penultimate sentence does require some consideration. The contention is that if source documents are not portion marked, then derivative classification is not possible. It is contended that extracted information in such situations will require an "original determination". We do not agree with this for the following reasons:

- (1) The derivative classifier should be able to use classification guides, thus insuring a consistent classification. Such guides are available for Restricted Data and Formerly Restricted Data.
- (2) If classification guides are not available (mainly in the areas outside Restricted Data and Formerly Restricted Data), then the derivative classifier can contact the office that originated the source document for a reading on classification.
- (3) Even portion markings do not always provide sufficient guidance for determining the classification of extracted information (as discussed more fully above).
- (4) p. 24 Last Paragraph

We believe this recommendation is overly harsh inasmuch as it appears to circumvent our right to appeal the decision of the Director of the Information Security Oversight Office (ISOO) to the National Security Council (Section 5-202f of E.O. 12065). We would want to have the option of exercising that right.



NATIONAL SECURITY COUNCIL  
WASHINGTON, D.C. 20508

August 25, 1980

Dear Mr. Fasick:

This is in response to your July 30, 1980, letter to Dr. Zbigniew Brzezinski, which transmits for National Security Council comment a draft of your report to Congress (job number 941204) entitled "Improved Executive Branch Oversight of the National Security Information Classification Program." Since the Information Security Oversight Office is providing a comprehensive response to your draft, I will confine my comments to topics that directly affect the NSC.

First, and most importantly, the NSC fully supports ISOO in the discharge of that office's oversight function. We are in almost daily contact with ISOO, and we stand ready to assist and advise the office as it oversees implementation of the President's executive order on classification.

However, because the President vested primary oversight responsibility in the Director of ISOO, we have carefully avoided actions that might lead the affected agencies to think that the NSC, rather than ISOO, bears this primary responsibility. Thus, when the previous Director wrote to the NSC concerning the Defense Department-Energy Department dispute concerning portion marking, the Director was orally advised that this matter fell directly within his delegated responsibilities and that it would not be necessary to forward the matter to the NSC for review unless an issue still remained after ISOO had made its final determination. We received no further communication from the Director. However, since your draft recommends further action on this matter, I expect that we may be approached by ISOO in the future if an issue still remains.

Second, it is difficult to reconstruct why ISOO staffers considered that they encountered problems concerning access to NSC records during an on-site inspection in October 1979; both the original Director of ISOO and the primary NSC point of contact have departed since that time. My recollection is one that would indicate that if there had been any problems, they would be attributable above all to inexperience on both sides on how to handle such inspections. However, as the attached report indicates, ISOO was granted full access to NSC records during its most recent inspection. Thus, we believe it is

unnecessary, and probably counterproductive, to agree to the limiting ground rules proposed in the Acting Director's letter of February 15, 1980. We have so informed the current Director of ISOO, who agrees.

Thank you for the opportunity to comment on your draft. We were especially pleased to note your conclusion that oversight of the national security information program has improved under Executive Order 12065, even though further work may still be necessary. I believe that we share a common commitment to an effective program, and we look forward to working with ISOO in addressing the recommendations made in your report.

Sincerely,



Christine Dodson  
Staff Secretary

Attachment

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Washington, DC 20548

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