

The National Security Archive

The George Washington University
Gelman Library, Suite 701
2130 H Street, N.W.
Washington, D.C. 20037

Phone: 202/994-7000
Fax: 202/994-7005
nsarchive@gwu.edu
www.nsarchive.org

October 15, 2004

VIA FACSIMILE: (202) 224-1772

Sen. Pat Roberts, Chairman
Senate Select Committee on Intelligence
211 Hart Senate Office Building
Washington, D.C. 20510

Sen. John D. Rockefeller, IV, Vice-Chairman
Senate Select Committee on Intelligence
211 Hart Senate Office Building
Washington, D.C. 20510

Dear Senators Roberts and Rockefeller:

We applaud the Committee's attention to issues of secrecy, overclassification, and intelligence reform. In that vein, we are writing to recommend congressional oversight for a particular area of questionable agency practice. Since 1984, Congress has granted most of the intelligence agencies an exception from the Freedom of Information Act (FOIA) for "operational files," under the assumption that nothing in these files could or would be releasable. There is now evidence in the public record against that assumption, as well as evidence that the intelligence agencies are abusing their exceptions and thus keeping unnecessary secrets at some cost to both the taxpayer and the credibility of the intelligence community.

Even though these operational file exceptions are supposed to be limited to extremely sensitive operational records that never could be released, based on a combination of what agencies have told us and some absurd FOIA denials, it is now clear that these exceptions are being abused to avoid search and review of broad swathes of possibly releasable information. For example, some agencies – citing the operational file exception – have refused to search under FOIA for materials that previously were released to other researchers; these records are not so sensitive that they never could be released. Agencies also have used the exception to shield from review historical records about long obsolete programs; these records are not current operational records.

When Congress exempted the operational files of the Central Intelligence Agency (CIA) in 1984, it required the CIA to internally review how it used the exception every ten years. The CIA conducted a decennial review commencing August 1994, but still has not provided notice of its statutorily required decennial review for 2004. Because the CIA's decennial review of its own use of the exception is now due, this is a perfect time for Congress to commence an oversight process, including possibly holding hearings, to examine the impact of these exceptions.

Today, the National Security Archive posted on its Web site at www.nsarchive.org information about these and other abuses of the operational files exceptions, as well as information that undermines the purported rationale for the exceptions. With intelligence reform and reorganization underway, this is an ideal time for Congress to examine the impact of these exceptions from the FOIA and tailor them to meet their original purposes of relieving agencies from FOIA burdens only for extremely sensitive materials, while ensuring the release of historical materials and materials for which there is a public interest in disclosure.

An Independent non-governmental research institute and library located at the George Washington University, the Archive collects and publishes declassified documents obtained through the Freedom of Information Act. Publication royalties and tax deductible contributions through The National Security Archive Fund, Inc. underwrite the Archive's Budget.

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The National Security Archive would be happy to meet with you to provide additional information about the exceptions and specific details of the records we believe have been wrongly removed from the scope of the FOIA.

Thank you for your continued concern about these issues.

Sincerely,


Thomas Blanton
Executive Director


Meredith Fuchs
General Counsel