



DEPARTMENT OF STATE

Washington, D.C. 20520

Department of State, A/GIS/IPS/SRP

 Change to _____
 February 6, Release () Excise () Deny () Declassify

Exemptions b () () E.O. 13526 25x () ()

Declassify after _____

With concurrence of: _____

 IPS by M. Allen obtained CIA | not obt
 Date 11/23/12

Dear Mr. Allen:

We appreciate the opportunity some of our historians had last fall to discuss with you and your colleagues certain specific questions relating to declassification of the Foreign Relations manuscripts. Specifically, your careful reconsideration of the documents selected for publication in volume XII, 1952-54, has been helpful to us, and we welcome your adherence to the rule of reason in surveying the material we have submitted for declassification review.

We are anxious to insure that our efforts to declassify material for the Foreign Relations series comports with the general spirit of "openness" reflected in E.O. 12065. Still troubling us are several points arising from our discussions and from your letter of October 28 presenting the rationale for your review of documents selected for publication in the Foreign Relations series.

1. The legal role of the Foreign Relations series in executive disclosure of material containing CIA equities is of key importance. Mandates issued over the years make clear that the series is a prime vehicle for initial disclosure of information on foreign policy. In 1972 President Nixon stated that the publication provided "an indispensable perspective on our Nation's history." He instructed the Secretary of Defense, the Director of Central Intelligence, and the Assistant to the President for National Security Affairs "to cooperate fully in collecting and declassifying the appropriate materials to the maximum extent consistent with the requirements of national security." The Congress has repeatedly recognized the Foreign Relations series as the official record of US foreign policy, most recently in

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the course of the hearings on the Foreign Assistance Authorization Act of 1979. ISOO Directive No. 1 confirmed the executive mandate expressed by President Nixon in 1972. It also instructed all agency heads to help the editors of the series meet their mandated goal of publishing twenty years after the event by facilitating access to classified material and expediting declassification of selected items. Accordingly, the legal bases of the series require us, subject to the needs of national security, to publish the material adjudged important regardless of whether it has been previously disclosed. We would be in violation of our mandates if we limited ourselves only to publication of material on US foreign policy that has already been released through "prior authorized executive disclosure." Furthermore, we are unable to locate in law any countervailing authority for applying as a standard for declassification the criterion of "prior authorized executive disclosure." The only legal standards applicable to CIA's review of Foreign Relations documentation are the "identifiable damage" criterion in E.O. 12065, Section 6 of the 1949 CIA Act, pertaining specifically to "intelligence sources and methods," and E.O. 12036, which speaks of "intelligence sources, methods, and analytical procedures."

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2. Retention of classification at the point of systematic review under E.O. 12065 is discretionary. The "identifiable damage" criterion, as you acknowledged in your letter of October 28, is one that the State Department desks apply carefully in reviewing the same material. The key issue is whether, despite the passage of time, the information, if released, would cause identifiable damage to US foreign policy. Even then, the balancing test may be applied in some cases to decide whether the damage would outweigh the public's right to the information.

*could be to publicize
CIA's activities*

[redacted] must be adjudged detrimental to the national interest at present in order for these matters to remain classifiable. Publication of the material would reveal only that the CIA had a station there and carried out activities there 26 years ago. They say nothing, nor could they say anything, about whether the CIA has a station there at present. The distinctions between whether the CIA "has or had a station in the country" and whether it "has or had an intelligence liaison relationship" are fundamentally important. Certainly if a true source or method is likely to be unveiled as a result of publishing anything from that period, we will be responsive to CIA's request for excision. But if publication raises in the mind of the reviewer the possibility of

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"identifiable damage" to US foreign relations, as interpreted under the discretionary provisions of E.O. 12065, we are obligated to weigh carefully arguments in favor of release against those favoring retention. This rule holds true in all cases, but it is particularly true when the State Department recommends release and the CIA recommends withholding. In the particular case specified in volume XIII (CHI 62-63) and in numerous other similar cases, the State Department judged that no identifiable damage to US foreign relations would result from release of the material.

*at that time
yes*

3. Apart from the legal strictures governing the content of the series, which require us to compile as complete a record as possible and to examine rigorously recommendations for excision against ~~national security~~ criteria, we have other compelling reasons for including the broadest scope of documentation in the publication.

*tough
will*

a. In the first place, the series, which has been published continuously for 128 years, is widely recognized as the most authoritative documentary publication of its kind on foreign policy issues. To omit significant categories of foreign relations material from it would compromise its authoritative character.

b. Secondly, failure to publish material concerning information already in the public domain -- as is very often the case with documents a quarter of a century old -- weakens the credibility of the series. By direct inference, it also weakens the credibility of the agency responsible for withholding that information. The presentation of evidence by this office to show that certain information is already in the public domain is therefore not intended to establish "authorized executive disclosure," but rather to pinpoint areas in which the credibility of both the series and the responsible agency would be damaged by further withholding of the documentation.

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c. The publication represents the last chance that the US government has to reveal publicly the record of its foreign policy in its full context. Documentation released out of context, even a few years later either through Freedom of Information procedures or at the National Archives, is far more susceptible to sensationalist treatment in the

press or elsewhere than is documentation released in its proper setting. The history of the Foreign Relations series proves the point.

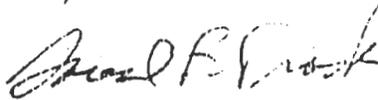
d. Finally, publication at a remove of 25 or 30 years normally assures that the information presented has become desensitized. As E.O. 12065 recognizes, the passage of time can be fundamental to determining whether identifiable damage to US foreign relations can occur.

Unlabeled again — [redacted] illustrates the point, although the recent publication of this information only reiterates disclosures made eight years ago. Because many of the historical actors are still on the political scene, events of 1971 are very likely to remain sensitive today. Events dating from 1954 or earlier are likely to be desensitized because most or all of the actors have departed the scene.

Bull 4. Although we fully recognize the statutory obligation of the CIA to protect "intelligence sources and methods" the Charter of 1949 does not protect locations, general agency activities, not disclosing methods, foreign liaison, or appraisals of situations. The legislative intent was not to inflate the definition of the term "sources and methods" beyond its normal meaning. In enacting the statutory authority the legislature referred only to protecting "intelligence sources and methods" and the "organization, functions, names, official titles, salaries, or numbers of personnel employed by the Agency." The former phrase refers explicitly only to sources and methods; the latter only to human sources. Information concerning other intelligence-related matters such as locations, activities, liaison, and appraisals can only be withheld under the "identifiable damage" criterion embodied in E.O. 12065.

I hope that these comments clarify our position. We request an opportunity to discuss the foregoing points further at your convenience.

Sincerely yours,



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