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

NOV 11 1976

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The Honorable Bella S. Abzug
Chairwoman, Government Information and
Individual Rights Subcommittee
Committee on Government Operations
House of Representatives



LM100103

Dear Madam Chairwoman:

In a letter dated March 30, 1976, you requested our assistance in surveying all files and records collected, used, stored or disseminated and accounting logs maintained by the National Security Agency (Agency) to determine whether the Agency has a system of records containing data on individuals, specifically United States (U.S.) citizens and resident aliens, which have not been properly reported and could be in violation of the Privacy Act of 1974.

You also asked for an evaluation of the measures the Agency instituted to segregate or purge irrelevant and illegal records, and the adequacy of safeguards imposed to limit its monitoring and collection, maintenance, and dissemination practices to exclude data impinging on First Amendment rights.

In your request reference is made to another inquiry conducted by your Subcommittee into the interception of international cable and telex traffic, by the Agency and that certain lists, referred to as watch lists, 1/ may be maintained by the Agency which would fall within the Privacy Act's definition of a system of records but are not so referenced.

The role of the Agency in watch list activity was terminated officially in the fall of 1973. The stopping of watch list activity was the result of actions taken by the Agency and other executive level departments. The Agency's watch list participation was discussed in public

1/ See Glossary

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hearings before the Senate Select Committee on Intelligence and detailed in its published documents. 1/

Presently any watch list material that was retained by the Agency is held for safekeeping by the Department of Defense, Office of the Principal Deputy Assistant Secretary of Defense (Intelligence). This action was accomplished May 12, 1976, and was initiated by a letter, dated April 23, 1976, from Robert Ellsworth, Deputy Secretary of Defense to Senator Frank Church. We furnished your Subcommittee staff with a copy of this letter on May 7, 1976.

In response to your request of March 30, 1976, and in subsequent contacts with staff members of your Subcommittee on April 23, 1976, and June 4, 1976, we discussed the overall scope of your request and its relationship to the complexities concerning the Agency's systems of files and records. This included such matters as the categories of records systems maintained, their highly classified and sensitive nature, the high volume of data involved, and the constraints involving document review and report preparation, removal or transmission from the Agency.

As we agreed with your staff we have not reviewed the Agency records systems concerning employees or others doing business with the Agency. We focused our efforts on that foreign intelligence data which could have a U.S. involvement.

AGENCY MISSION AND AUTHORITIES

Under the authority of the President, the Secretary of Defense has been delegated responsibility for both providing security of U.S. Government communications and seeking intelligence from foreign electrical communications. Both functions are executed for the Secretary of Defense by the Agency Director through a complex national system which includes the Agency at its nucleus.

The Communications Security mission is directed at enhancing the security of U.S. Government communications

1/ Intelligence Activities, Senate Resolution 21, Volume 5 Hearings--Lt Gen Lew Allen Jr. Testimony, Oct. 29, 1975, pp 20-24

Book III, Senate Report No. 94-755, pp 743-764, April 23, 1976.

whenever needed to protect the communications from exploitation by foreign governments--a complex undertaking in today's advanced electronic world.

The Signals Intelligence mission is directed to foreign intelligence, 1/ obtained from foreign electrical communications and also from other foreign signals such as radars. Signals are intercepted by many techniques and processed, sorted and analyzed by procedures which largely reject inappropriate or unwanted signals. The foreign intelligence derived from these signals is then reported to various agencies of the Government in response to their approved requirements for foreign intelligence.

In 1950, the Congress enacted 18 U.S.C. 798, which prohibits the unauthorized disclosure, prejudicial use, or publication of classified information of the Government concerning communications intelligence activities, cryptologic activities, or the results thereof. It indicates that the President is authorized: (1) to designate agencies to engage in communications intelligence activities for the U.S., (2) to classify cryptologic documents and information, and (3) to determine those persons who shall be given access to sensitive cryptologic documents and information. Further, this law defines the term "communication intelligence" to mean all procedures and methods used in the interception of communications and the obtaining of information from such communications by other than the intended recipients.

A particular aspect of the Agency's authorities relates to the definition of foreign communications. 2/ The Agency has defined this term as communications involving at least one foreign terminal. This interpretation is consistent with the definition of foreign communications in the Communications Act of 1934.

SUMMARY OF REVIEW

During our review in the Spring of 1976, it was ascertained that the Agency does not conduct intercept operations for the purpose of obtaining the communications of any U.S. Person.3/ (U.S. Person means: U.S. Citizen, resident alien in the U.S., or corporation with principal place of business in the U.S.) However, it necessarily

1/ See Glossary
2/ See Glossary
3/ See Glossary

occurs that some circuits which are known to carry foreign communications necessary for foreign intelligence will also carry personal communications between U.S. Persons, one of whom is at a foreign location. The interception 1/ of communications, however it may occur, is conducted in such a manner as to minimize the unwanted messages. Nevertheless, many unwanted communications are potentially available for selection. Subsequent processing, sorting and selecting for analysis is conducted in accordance with strict procedures to insure immediate and, where possible, automatic rejection of inappropriate messages. The analysis and reporting is accomplished only for those messages which meet specified conditions and requirements for foreign intelligence.

Current Policies and Procedures

We reviewed the current policies and procedures which have been implemented since the enactment of the Privacy Act of 1974. Following are some highlights from the implementing documents that pertain to your request.

Executive Order 11905 "U.S. Foreign Intelligence Activities"

The Executive Order dated February 18, 1976, stipulates that measures employed to acquire information about the capabilities, intentions and activities of other governments are to be responsive to the legitimate needs of our Government. They are to be conducted in a manner which preserves and respects our established concepts of privacy and our civil liberties.

The Agency is classified as a "foreign intelligence" 2/ agency and may not engage in electronic surveillance of domestic communications for foreign intelligence purposes.

Procedures Approved by the Attorney General
Under Executive Order 11905

The Attorney General has approved procedures pursuant to Section 5, (Restrictions on Intelligence Activities) of E.O. 11905. These classified procedures contain certain safeguards pertaining to U.S. Persons.

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Agency Compliance with the
Limitations on Foreign Communications Directive

This classified directive as revised May 21, 1976, further implements Executive Order 11905. The stated purpose of this directive is to prescribe policy, provide procedures, and assign responsibilities to insure that the Signals Intelligence and Communications Security missions of the Agency are conducted so as to guarantee proper safeguards to the rights and privacy of U.S. Persons under applicable laws, Executive Branch directives and internal directives and policy. Certain extracts of Executive Order 11905 and the procedures approved by the Attorney General are annexes to and make up the major portion of the Agency's directive. According to these procedures the Agency may only intercept foreign communications for foreign intelligence purposes.

Production and Reporting Operations

We have reviewed the operations of the Agency which have a potential to involve U.S. Persons. We specifically conducted an in depth analysis of the collection and analysis methods, the details of which cannot be made public, of the Agency's organization having the greatest potential to involve U.S. Persons. It necessarily occurs that foreign communications may contain references to U.S. Persons. The Agency takes great pains to remove the identity of the U.S. Person from any foreign intelligence report. That material which is not used in the reporting process is destroyed. Employing sampling techniques, we selected a random sample of reports from a large number of report titles for a detailed review and verified that there had been no unauthorized use of the names of U.S. Persons. We did find three instances in which the mention of equipment might identify the U.S. manufacturer to a knowledgeable person. We believe the retention of this material, which might identify a manufacturer, was due to employee error. However, in no instance was any question of personal privacy involved.

Conclusions

We believe that the Agency has substantially strengthened its policies and procedures, relating to intercepted electronic communications, to insure that the operations of the Agency are conducted in such a way so as to provide proper safeguards to the rights and privacy of U.S. Persons.

We found no evidence that the Agency has not adequately implemented these policies and procedures except for the minor instances noted which did not involve a question of personal privacy.

In providing us with informal comments upon our draft letter, Agency officials pointed out to us that the reports we had selected for review had been prepared in April 1976. In May 1976, the Agency further strengthened its procedures to safeguard the identity of U.S. Persons, firms or entities.

We believe also that these Agency actions have complied with the recommendations made by the Senate Select Committee on Intelligence, Book II, Senate Report 94-755, pages 308-310, April 26, 1976.

We hope that this report is responsive to your needs. The details underlying our findings and conclusions are highly classified and their disclosure would not materially alter the substance of this report.

Sincerely yours,

(Signed) ~~ELMER~~ B. STAATS

Comptroller General
of the United States

GLOSSARY

"Foreign Communication" means a communication which has at least one communicant located outside of the U.S.

"Foreign Intelligence" means (1) information relating to the ability of the U.S. to protect itself against actual or potential attack or other hostile acts of a foreign power or its agents; (2) information, with respect to foreign powers or non-U.S. Persons, which because of its importance is deemed essential to the security of the U.S. or to the conduct of its foreign affairs; or (3) information relating to the ability of the U.S. to protect itself against the activities of foreign intelligence services.

"Interception" means the acquisition by the Agency through electronic means of a communication to which it is not an intended party and the processing of the contents of that communication into an intelligible form intended for human inspection.

"U.S. Person" means U.S. citizens, aliens admitted to the U.S. for permanent residence and corporations or other organizations incorporated and domiciled or organized in the U.S.

"Watch List" means a list of words, including individual names, subjects, locations, etc., for use to sort out information of foreign intelligence value from that which is not of interest.