



DIGEST :

UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

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IN REPLY REFER TO: B-193302

OFFICE OF GENERAL COUNSEL

DEC 6 1978

The Honorable John L. Burton
Member, United States
House of Representatives
450 Golden Gate Avenue
Box 36024
San Francisco, California 94102

Dear Mr. Burton:

By letter dated October 19, 1978, your staff asked us to review an inquiry by United States Army, relating to the authority of this Office to investigate the financial accounting practices of the National Security Agency (NSA). The question to which we have been asked to respond also inquires, "*** whether financial managers are given the laws and regulations to implement the appropriations of Congress."

The basic audit authority of the General Accounting Office (GAO), contained in the Budget and Accounting Act of 1921, the Accounting and Auditing Act of 1950, the Legislative Reorganization Act of 1970, and the Congressional Budget and Impoundment Control Act of 1974, provide the legal basis for our review of NSA activities. These statutes direct GAO to examine and audit activities of each executive branch agency, and they grant GAO access to these agencies' records and information as necessary to discharge this responsibility. GAO's authority is extensive, encompassing not only financial auditing but also management reviews and evaluations of programs and activities. Broad access to records and information is necessary to accomplish these tasks. However, certain restrictions on GAO audit authority are provided by law, including instances where monies are accounted for solely on certification by the head of a department or establishment.

The NSA is a separately organized agency within the Department of Defense and, for financial administrative convenience, is under the direction of the Secretary of Defense. Because of the sensitive nature of NSA's mission, Congress has enacted several statutes to safeguard certain of the agency's activities and to enable the Government to limit disclosure of those activities to such information as does not interfere with the accomplishment of NSA's cryptologic missions.

The Act of May 29, 1959, Pub. L. No. 86-36, § 6, 73 Stat. 63 (1959), provides, with one exception which is not pertinent, that:

50 U.S.C. 402 note

"* * * nothing in this Act or any other law * * * shall be construed to require the disclosure of the organization or any function of the National Security Agency, of any information with respect to the activities thereof, or of the names, titles, salaries, or number of persons employed by such agency."

* * * * *

We have construed this section to prohibit only disclosure of NSA activities to the public at large and not as a restriction limiting access of properly cleared GAO staff members to NSA financial data. Accordingly, while GAO has legal authority to examine NSA's accounts, arrangements acceptable to all parties must be made for distribution of our findings.

Several GAO staff members are assigned to perform on-site financial audits of NSA vouchers and accounts. However, because of the disclosure limitations, no formal report detailing the results of our continuing examinations of the agency's activities has been published. When we detect questionable payments or entitlement claims, they are resolved on an informal basis between GAO representatives and the cognizant NSA officials. We have approved the design of NSA's accounting system (based on our evaluation of its nonclassified aspects).

It appears that a portion of the funds here in question may have come from Department of Defense appropriations earmarked for "Intelligence and Communications Activities." A certain portion of those funds were set aside for use in fiscal years 1974 and 1975 by the Secretary of Defense "on his certificate of necessity for confidential military purposes * * *." Pub. L. No. 93-238, 87 Stat. 1030 (1974); Pub. L. No. 93-437, 88 Stat. 1216 (1974). Accordingly, this Office would have no legal authority under which it could take exception to such expenditures.

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The second part of "question (c)", is not entirely clear. The system of financial control within the Government is based on adherence by agencies to the principles and standards of accounting proposed by them and approved by this Office. These include internal audit procedures. Ordinarily, therefore, "implementing the appropriations of Congress" is accomplished through adherence to the prescribed procedures.

More specifically, as to the extent of an accountable officer's authority to determine the legality of proposed expenditures from a given appropriation, an authorized certifying officer, to whom a voucher has been presented for payment is responsible, pursuant to 31 U.S.C. § 82c, as amended, for determining that the proposed payment is not prohibited by law and that it represents a legal obligation under the appropriation or

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fund involved. In discharging this responsibility, he may obtain a conclusive answer to questions of law which arise with respect to specific vouchers presented to him for certification by requesting an advance decision from the Comptroller General under the authority of 31 U.S.C. § 82d (1970) (Agency heads may also get advance decisions.) He may then rely on this ruling in deciding whether to certify the voucher before him.

We trust that this will serve the purpose of your inquiry.

Sincerely yours,

MILTON SOCOLAR

Milton J. Socolar
General Counsel