



Office of the Attorney General
Washington, D. C. 20530

March 11, 1983

MEMORANDUM

TO: Heads of Offices, Boards,
Divisions and Bureaus

FROM: William French Smith *WFS*
Attorney General

SUBJECT: Presidential Directive on Safeguarding
National Security Information

The President has issued a directive to strengthen our efforts to safeguard national security information from unlawful disclosure. This directive, a copy of which is attached, is based upon the recommendations of an interdepartmental group chaired by the Department of Justice. I fully support the President's policy and expect that it will be faithfully implemented throughout the Department.

This directive does not alter the existing obligation of Department personnel to comply with statutes and regulations pertaining to national security information. We must be careful to avoid the unnecessary or improper use of classification. Whenever possible, information should be kept unclassified or declassified so as to permit public access. However, information that is properly classified in the interest of national security must be protected from unauthorized disclosure.

Many of the specific requirements of the directive involve no change from current Department of Justice policy.

- The use of nondisclosure agreements and the requirement of prepublication review in appropriate cases are consistent with current policies. More detailed guidance on these policies will be provided in the near future.
- The directive requires no change in existing Department policies on use of the polygraph, with regard to attorneys or FBI employees. Policies with regard to employees in the competitive service will be changed to conform with expected revisions in OPM regulations on this subject.

- Internal investigations of unauthorized disclosures will continue to be coordinated by the Office of Professional Responsibility, with assistance from the FBI as needed.

To the extent implementation of the President's directive requires changes in Department of Justice policies and procedures, you will be kept fully informed.

Embargoed for Conclusion of Background Briefing
Held March 11, 1983, at the Department of Justice

Fact Sheet

Presidential Directive on
Safeguarding National Security Information

Background

- Unlawful disclosures of classified information damage national security by providing valuable information to our adversaries, by hampering the ability of our intelligence agencies to function effectively, and by impairing the conduct of American foreign policy.
- The President has issued a directive requiring that additional steps be taken to protect against unlawful disclosures of classified information.
- This directive is based on the recommendations of an inter-departmental group convened by the Attorney General.

Scope of Directive

- The directive deals only with disclosures of classified information.
- By Executive Order, the only information that can be classified is information which "reasonably could be expected to cause damage to the national security" if released without proper authorization. (E.O. 12356 § 1.1(a)(3).)
- The Executive Order also prohibits the use of classification to conceal violations of law, inefficiency or administrative error, or to prevent an embarrassment to a government agency or employee. (E.O. 12356 § 1.6(a).)

Summary of Provisions

- The directive imposes additional restrictions upon government employees who are entrusted with access to classified information, and upon government agencies that originate or handle classified information.
 - More employees will be required to sign nondisclosure agreements, including provisions for prepublication review, such as were approved by the Supreme Court in United States v. Snepp (1980).

Safeguarding National Security Information

As stated in Executive Order 12356, only that information whose disclosure would harm the national security interests of the United States may be classified. Every effort should be made to declassify information that no longer requires protection in the interest of national security.

At the same time, however, safeguarding against unlawful disclosures of properly classified information is a matter of grave concern and high priority for this Administration. In addition to the requirements set forth in Executive Order 12356, and based on the recommendations contained in the interdepartmental report forwarded by the Attorney General, I direct the following:

1. Each agency of the Executive Branch that originates or handles classified information shall adopt internal procedures to safeguard against unlawful disclosures of classified information. Such procedures shall at a minimum provide as follows:

a. All persons with authorized access to classified information shall be required to sign a nondisclosure agreement as a condition of access. This requirement may be implemented prospectively by agencies for which the administrative burden of compliance would otherwise be excessive.

b. All persons with authorized access to Sensitive Compartmented Information (SCI) shall be required to sign a nondisclosure agreement as a condition of access to SCI and other classified information. All such agreements must include a provision for prepublication review to assure deletion of SCI and other classified information.

c. All agreements required in paragraphs 1.a. and 1.b. must be in a form determined by the Department of Justice to be enforceable in a civil action brought by the United States. The Director, Information Security Oversight Office (ISOO), shall develop standardized forms that satisfy these requirements.

d. Appropriate policies shall be adopted to govern contacts between media representatives and agency personnel, so as to reduce the opportunity for negligent or deliberate disclosures of classified information. All persons with authorized access to classified information shall be clearly apprised of the agency's policies in this regard.

2. Each agency of the Executive branch that originates or handles classified information shall adopt internal procedures to govern the reporting and investigation of unauthorized disclosures of such information. Such procedures shall at a minimum provide that:

a. All such disclosures that the agency considers to be seriously damaging to its mission and responsibilities shall be evaluated to ascertain the nature of the information disclosed and the extent to which it had been disseminated.

b. The agency shall conduct a preliminary internal investigation prior to or concurrently with seeking investigative assistance from other agencies.

c. The agency shall maintain records of disclosures so evaluated and investigated.

d. Agencies in the possession of classified information originating with another agency shall cooperate with the originating agency by conducting internal investigations of the unauthorized disclosure of such information.

e. Persons determined by the agency to have knowingly made such disclosures or to have refused cooperation with investigations of such unauthorized disclosures will be denied further access to classified information and subjected to other administrative sanctions as appropriate.

3. Unauthorized disclosures of classified information shall be reported to the Department of Justice and the Information Security Oversight Office, as required by statute and Executive orders. The Department of Justice shall continue to review reported unauthorized disclosures of classified information to determine whether FBI investigation is warranted. Interested departments and agencies shall be consulted in developing criteria for evaluating such matters and in determining which cases should receive investigative priority. The FBI is authorized to investigate such matters as constitute potential violations of federal criminal law, even though administrative sanctions may be sought instead of criminal prosecution.

4. Nothing in this directive is intended to modify or preclude interagency agreements between FBI and other criminal investigative agencies regarding their responsibility for conducting investigations within their own agencies or departments.

5. The Office of Personnel Management and all departments and agencies with employees having access to classified information are directed to revise existing regulations and policies, as necessary, so that employees may be required to submit to polygraph examinations, when appropriate, in the course of investigations of unauthorized disclosures of classified information. As a minimum, such regulations shall permit an agency to decide that appropriate

adverse consequences will follow an employee's refusal to cooperate with a polygraph examination that is limited in scope to the circumstances of the unauthorized disclosure under investigation. Agency regulations may provide that only the head of the agency, or his delegate, is empowered to ~~order an employee to submit to a~~ polygraph examination. Results of polygraph examinations should not be relied upon to the exclusion of other information obtained during investigations.

6. The Attorney General, in consultation with the Director, Office of Personnel Management, is requested to establish an interdepartmental group to study the federal personnel security program and recommend appropriate revisions in existing Executive orders, regulations, and guidelines.

Agencies will be required to adopt policies concerning contacts between journalists and persons with access to classified information, so as to reduce opportunities for unlawful disclosures. However, no particular policies are mandated in the directive.

- Agencies will be required to adopt new procedures so that unlawful disclosures of classified information will be reported and analyzed more efficiently.
- The directive establishes a new approach to investigating unlawful disclosures to replace the past practice of treating such matters as purely criminal investigations.
 - Although unauthorized disclosures of classified information potentially violate a number of criminal statutes, there has never been a successful prosecution. There are a number of practical barriers to successful criminal prosecution in most of these cases.
 - This directive clarifies FBI's authority to investigate unlawful disclosures of classified information, even though it is anticipated that a successful investigation will lead to administrative sanctions (such as demotion or dismissal) rather than criminal prosecution.
 - All agencies with employees having access to classified information will be required to assure that their policies permit use of polygraph examinations under carefully defined circumstances. The polygraph is already used on a regular basis by our largest intelligence agencies. The directive provides for a greater degree of consistency in government-wide policy regarding use of this investigative technique.
 - The use of the polygraph in any particular case will be subject to the discretion of an employee's agency head.
 - There will be no change in the current practice of targeting investigations at employees who are suspected of unlawfully disclosing classified information, rather than at journalists who publish it.

- The directive provides that employees found by their agency head to have knowingly disclosed classified information without authorization or to have refused cooperation with investigations will be subject to mandatory administrative sanctions to include, as a minimum, denial of further access to classified information. Existing procedural safeguards for personnel actions involving federal employees remain unchanged.

Expected Results

- This directive is not expected to eliminate all unlawful disclosures of classified information.
- The directive is designed to improve the effectiveness of our present program and, over time, to reduce the frequency and seriousness of unlawful disclosures of classified information.
- The directive also emphasizes that government employees who are entrusted with classified information have a fiduciary duty to safeguard that information from unauthorized disclosure.