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Personnel Security Program

Director, AFSA
 Thru: Mr. Friedman, Consultant
 Chief of Staff

Chief, Security Control
 Division

23 April 1952
 Col Wyman/60261/mel

1. 18 April 52 - Exploratory conference with:

Mr. John Moore, Chief of Personnel, Secretary of Defense's Office
 Mr. Robert Heyduck, Legal advisor to ICIS
 Colonel Hill, Assistant to Chief of Administration Security,
 Secretary of Defense's Office

All were interested in AFSA's problem in personnel security matters. All concurred that legally we should operate under PL 733 - and that, since an inter-departmental Executive Order was in the making - we would be justified to set up procedures similar to AEC's pending issuance of the Executive Order. It was suggested that we follow the principles contained in the draft discussion (herewith with my comment, draft received by the Security Control Division on 22 April (Inclosure No. 1)) which is now before the National Security Council.

2. I conferred with the Secretary of the Army's office (Mr. John Connell) on 21 April 52. The gist of what was discussed there is attached (Inclosure No. 2). In Connell's opinion PL 733 will not suffice as our authority.

3. Before recommending our pending procedure, I wish to discuss all of the matters forwarded herewith with the Secretary of Defense's Office again, particularly with respect to our comments on the ICIS proposal. In the meantime, I suggest this material be passed to Plans and Policies for study. JCS 2010/22 should be studied in conjunction with it.

LESLIE H. WYMAN
 Colonel, Artillery
 Chief, Security Control Division

Inclosures - 2

1. Report to NSC from ICIS
2. Discussion with Mr. Connell

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Inclosure No. 1 to D/P to Director, AFSA, from Chief, Security Control Division, Subj: Personnel Security Program, dated 23 April 52

23 April 1952

Memorandum for the Record:

SUBJECT: Comments of the Security Control Division on attached document: Report to NSC from ICIS Concerning President's Letter of 14 July 51. Document dated 14 February 52.

1. Page 2 - Uniform minimum standards desirable government-wide but authority to raise those standards must be given for:
 - a. Service cryptographic clearances - Code-room, etc. use
 - b. Service cryptologic activities (Army, Navy, Air Force)
 - c. Possibly b., above, should be AFSA's responsibility and authority set up to direct service compliance

Procedures for central review

There should be central review for loyalty cases (EO 9835 and PL 733) but not for the type of security risk cases that involve character, discretion, loose-talking, etc. The degree of risk here varies with the sensitivity of the position.

2. Page 3 - There should be specific statutory authority for AFSA. Since the very existence of AFSA, for public consumption, is kept out of circulation - perhaps its statutory existence should be tied to USCIB and the Director's authority be delineated by USCIB's own statute, if there is one. Although a DOD Agency, AFSA is, in effect, the operating device of USCIB and incidentally of the DOD and JCS. The similar service agencies under their respective departments provide, with AFSA, raw materials - AFSA produces the final product for JCS? for USCIB? for DOD?
3. Page 3 - AFSA was not investigated.

For information of board - in the absence of clearly defined authority, AFSA has handled EO 9835 cases under SR 620-220-1 with MDW as the processing headquarters under the Loyalty Program. All other cases have been handled as "unsuitability for government service" (Lloyd-La Follette Act type) with no recourse for the individual. Charges have not been made - separation has been administrative or by resignation. If the question is raised, SR 380-160-10 has been quoted as authority. There have been no cases under PL 733 that I know of unless those which were started as EO 9835 later were considered as PL 733, but not of sufficient weight to warrant adverse action.

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Comments of the Security Control Division on attached document.

4. Page 4 - As it now stands, AFSA should follow D/A program. However, this cannot be done in toto. The only way in which our civilians are D/A people is actually in their payment of Army funds. AFSA does the actual payment, appoints, administers, counsels, etc. I suppose we are in effect - in operation - as independent as CIA or AEC minus their legislative authority.

Under commitments made in AR 7439, PL 733 cannot be applied to AFSA's "security risk cases" except those related to EO 9835.

5. Pages 5 to 9 - For AFSA - required:

- a. Establish AFSA as an "excepted agency" with statutory powers insofar as administration of the loyalty program is concerned. The Director has the authority to evaluate investigations and to grant clearances - or access to classified information. He must have the authority to deny or revoke clearances as well.
- b. Although AFSA is under D/A on paper and for pay, operationally and in the majority of administration, it is not. Clarification of this point is required.
- c. Director, AFSA, needs freedom of action granted CIA in the National Security Act of 1947.
- d. Director, AFSA, needs authority to set up own procedural system - and decision as to whether procedural "rights" for the review of a case are in the interests of the national security.
- e. Director, AFSA, should be exempted from adherence to the Veterans' Preference Act of 1944 - he must have final removal authority.

6. Page 9 - Actually, AFSA desires to set up formalized procedures for the handling of security cases - but under what authority?
7. Page 11 - AFSA acts under civil service laws and regulations governing suitability for continued employment.
8. Page 16 - All AFSA employees are in a position to endanger or compromise the national security. A security program is essential.
9. Page 17 - All positions in AFSA must, because of the nature of the operation, be classified as "sensitive". Most of AFSA's adverse personnel actions cannot be appropriately taken (legally) under the loyalty program or CSC rules on general suitability.

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Comments of the Security Control Division on attached document.

10. Page 18 - A statute is needed. There is no objection to the application of procedural safeguards.
11. Page 19 - Concur with 3; as limited heretofore, concur with 4 and 5.
12. Page 21 - Do not believe that "appeal" in this sense should be granted in removal actions of cryptologic activities. Heads of Agency have great responsibility security-wise; if there is a doubt in their minds regarding a security risk, that doubt should be upheld. Appeal could be for purpose of establishing right to other government employ in less sensitive operation.
13. Page 23 - Para. 6 - But should be afforded the opportunity to resign.
14. Page 23 - Para. 7 - Not practical unless investigative procedures are speeded up without loss of thoroughness. If AFSA were limited by this proviso, it would go out of business - or, at least, be unable to expand its operation as required by current directives.

Director, AFSA, should be authorized to grant interim clearances to highest level - on a calculated risk. Currently, a favorable NAC plus a favorable interview by means of the polygraph is considered a basis for interim-top secret clearance. In 671 cases, only 10 such interims were not supported by the background investigations; of the 10, only 1 might have developed into a loyalty case.

15. Page 24 - Para. 8 - Must be done in AFSA.
16. Page 25 - Para. 9 - Concur in entirety.

Para. 10 - But an employee security program of some sort is essential.

Page 28 - Recommendations

- a. Concur with definitions.
- b. All positions in AFSA are sensitive.
- c. Employee security program is required. Request should be made to ICIS for issuance of an Executive Order authority for a special PL. PL 733, under commitments already made by Departments as to interpretation, is not adequate.

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Comments of the Security Control Division on attached document.

- d. AFSA desires authority to publish officially criteria and procedure similar to that now published by AEC.
- e. (1) Concur in standards as a minimum - AFSA will have to add certain items.
- (2) Adverse action in AFSA must be final; there are no non-sensitive positions.
- (3) Concur in general but security would preclude suspension in some cases.
- (4) Concur when removal action is required.

For AFSA - Security Control Division - Army Screening Board
 Personnel Security Board - Army Hearing Board
 Security Review Board - Army Loyalty-Security Board
 Final action by Director
 Personnel Action, if approved, to CSC

- (5) Concur as stated.
- (6) Not applicable to AFSA.
- (7) Concur.

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Inclosure No. 2 to D/F to Director, AFSA, from Chief, Security Control Division, Subj: Personnel Security Program, dated 23 April 52

23 April 1952

Memorandum for the Record:

SUBJECT: Gist of Discussion by Chief, Security Control Division and Mr. John Connell, Manager of Personnel, OSA on 21 April 1952.

Problem: To establish the authority of the Director, Armed Forces Security Agency, to render decisions which are conclusive and final with regard to personnel actions involving the separation of civilian employees who fail to qualify for security clearance under the criteria for eligibility for clearance prescribed by directives applicable only to cryptologic activities.

Facts bearing on the problem:

- a. Although not a member of USCIB, ^{the} AFSA, through its Director, the USCIB coordinator, operates under USCIB directives.
- b. By Secretary of Defense Memo, 20 May 1949, the Armed Forces Security Agency was formed. Its charter, if such it can be called, is a paper approved by the JCS on 1 September 49, which places the Director in full operational control of the Agency but sets up a service responsibility for administrative support to AFSA; its terms are vague.
- c. By Secretary of the Army letter, 8 August 1950, the Secretary of the Army delegates to the Director, AFSA, the appointing authority for civilian personnel - who are Schedule B, excepted appointments for sensitive positions. The extent of this delegation is not delineated.
- d. Purpose of the language of the foregoing, aside from to set up a means of accomplishing an operational mission, was:
 - (1) To set up a joint cryptologic activity under the Secretary of Defense but with direction from USCIB.
 - (2) To hide the agency, as a Secretary of Defense installation, by failing to include it in the Secretary of Defense organization charts and by burying its personnel strength, Army and civilian, in the Department of the Army strength and budget figures, its Navy personnel in the Department of the Navy figures, and its Air Force personnel in Air Force figures.
 - (3) Because of lack of precedent, to limit any discussion of detailed authorities and responsibilities of the Director, AFSA, until such time as experience proved necessity therefor.

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Discussion by Chief, Security Control Division and Mr. John Connell

Discussion:

1. For purposes of this paper, delineation of the Director's authority to grant, deny, or revoke cryptologic clearances to civilian personnel and his subsequent authority - in the case of revocation or denial - to terminate the services of personnel concerned is required. From the standpoint of national security and the Director's responsibility therefor in this respect, even such action as the introduction and passage of necessary legislation is considered mandatory if no other solution is found under current executive orders, public laws, or regulations.

2. From the Director's standpoint:

- a. There are no "levels" of clearance in AFSA. All employees must be cleared to the highest level and be eligible for access to the most highly classified information on a "need to know" basis.
- b. The clearance required for AFSA personnel is comparable to a CIA "ComInt" clearance (Top Secret, Crypto) and is higher than an AEC "Q" clearance which permits American citizenship to be waived in certain cases.
- c. To determine eligibility for a "cryptographic clearance" an individual must first meet prescribed selection standards set up by USCIB. (The Army's interpretation of these standards is SR 380-160-10.) He must then undergo a complete background investigation before a final clearance can be granted; operational need and a full acceptance of the calculated risk has persuaded the Director to grant interim cryptographic clearances based on a favorable National Agency Check plus a favorable interview by means of the polygraph, pending completion of the background investigation. The granting of a cryptographic clearance by AFSA establishes eligibility for a cryptologic clearance and indoctrination on a "need to know" basis for access to cryptologic information; it does not, per se, mean that an individual having a cryptographic clearance necessarily has cryptologic clearance - only when indoctrination is administered is this latter a fact.
- d. SR 380-160-10 and the cryptologic clearance it discusses does not contemplate the AFSA definition of cryptographic versus cryptologic clearance - it is all inclusive as what is known as a crypto-clearance. The Air Force grants a cryptographic clearance as does AFSA and based on the same selection standards. It then grants "authority to indoctrinate" to the level required, i.e., confidential, secret and top secret. The Navy currently makes no named distinction; all clearances are granted under existing Navy regulations in accordance with the work involved and the need to know. The regulation concerned

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Discussion by Chief, Security Control Division and Mr. John Connell.

is RIF45B which corresponds to SR 380-160-10.

- e. The above is noted to show the confusion that exists with regard to the word "clearance" from AFSA's standpoint. Notwithstanding the confusion, the Director, AFSA, is responsible for the clearance of civilian employees and accepts the interpretations stated in sub-paras a and b above.
3. From the foregoing - if the Director has the delegated authority to grant clearances, he must have a like authority to withhold them or revoke them.
 4. Under current operation:
 - a. Background investigations are conducted for AFSA by each of the three service investigative agencies. National Agency Checks are run by the Civil Service Commission. Evaluation of results of investigation and the decisions to grant cryptographic clearances are made by Director, AFSA.
 - b. If, in the course of investigation, derogatory information bearing on possible disloyalty or subversive activity is turned up (also applicable to the NAC), cases are turned over to the FBI for processing under Executive Order 9835. Completed investigative material is turned over to the D/A (MDW) for processing under SR 620-220-1.
 - c. AFSA's problem is not in the handling of these cases, which are rare, but in handling those which involve the term "Security risk," which, if AFSA was included as a separate entity in Public Law 733, could be handled under that law by the Director. These cases are many but rarely fall under the interpretation of PL 733 required under HR 7439, 81st Congress, i.e., disloyalty or subversive activity, in the past as opposed to Executive Order 9835, present and proven complicity.
 - d. A security risk for AFSA, on the other hand, in its highly sensitive operation, involves, among other things, evidence of poor character, indiscretion, indications of too liberal thinking, association with individuals and/or organizations of doubtful reputation or affiliation - in fact, any information which casts doubt upon an individual's reliability, his continued ability to safeguard information, the disclosure of which would be inimical to national security.
 5. Unfortunately, there is no legislation known which permits the revocation or denial of clearance as a result of this latter definition of Security Risk. Hence, the Director, in his responsible position has been forced to act on his own discretion. His position is this:

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Discussion by Chief, Security Control Division and Mr. John Connell.

- a. To withhold or deny a clearance forces the employee to be placed in an unproductive, non-operational capacity. Being an "excepted appointee" of qualifications peculiar to AFSA, he is not wanted in other government activities where excepted appointment are few. There is no "non-sensitive" position within AFSA to which he could be transferred. Termination is the inevitable result.
There being but one possible clearance in AFSA
 - b. Because of the confidential sources of information which raises the doubt and establishes the need to withdraw or revoke clearance and because of the legal status of the polygraph which often produces admissions by the individual himself, he cannot be charged before a Loyalty-Security board composed of individuals not themselves cleared and indoctrinated as to AFSA's mission.
 - c. Therefore, the Director has had to terminate administratively, giving as the reason therefor only that "the individual does not meet AFSA requirements." This action does not permit the free flow of democratic processes envisaged by Executive Order 9835.
6. Under the old Public Law 808 which was in effect during the war the above action was authorized. Under PL 733 which replaced PL 808 in 1947, the action now being taken by the Director is not authorized.
7. Under current laws, cases under EO 9835 and PL 733 deal with disloyalty and subversive activity and must be forwarded to a D/A Screening Board which determines if charges can be sustained. If so, the cases go to the D/A Hearing Board which makes recommendations to the Secretary of the Army. Adverse decisions can be appealed to the Army Security Loyalty Appeals board. AFSA cannot go along with this procedure - a reasonable doubt has been established - a reversal of opinion by the appeals board could not be accepted by the Director as grounds to re-instate.
8. Also, under current laws, the "Security Risk" to which AFSA is most vulnerable is not covered. Other departments and agencies (even AEC and CIA) can place persons in this category in non-sensitive employment or abolish the position. AFSA cannot.
9. The Director, AFSA, needs the authority to publish two documents similar to the AEC F. R. Doc 50-10584 and F. R. Doc 50-8085 (of which the Chief of Staff has copies) for handling cases of this nature. AFSA should have a Personnel Security Board (comparable to the D/A Hearing Board; the Security Control Division should perform the function of the D/A Screening Board). This board should consist of at least three (two military and one civilian) high level voting members, a legal advisor, the Chief, Security Control Division, and the Head, Civilian Personnel Branch. AFSA should have a Personnel Security Review Board consisting of the Chief of Staff and the two deputies with legal counsel. The decisions of the Review Board should be recommendations to the Director, whose decision should be final and conclusive. The Hearing Board will be guided by procedural rules but will listen to the presentation of the individual and/or his counsel and witnesses.

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Discussion by Chief, Security Control Division and Mr. John Cornell.

10. Pending Board action, the Director should have authority to withdraw or revoke clearance immediately same is recommended - he may suspend excepted appointees; he must suspend permanent or indefinite appointees if PL 733 is amended to grant this authority.

11. The Director must continue to administer these matters with regard to "veterans preference eligible" in accordance with existing laws.

12. Questions which arise follow:

- a. Can legislation be accomplished to give specific authority for the Director, AFSA, to act independently under PL 733 or, in view of the commitments made to Congress by the services under HR 7439, must separate legislation be sought?
- b.
- b. Is the course of action required in conflict with other statutes governing authority to approve personnel actions finally?
- c. Would it serve our purpose to have the Civil Service Commission spell out some "probationary status" for AFSA's excepted appointees which would permit their termination under local application of the Lloyd - LaFollette Act of 1912 as amended by PL 623 under the old rule Number 12 which authorizes separation (in cases of poor character, lack of discretion, etc.) "for the good of the service"? Our probationary status for excepted appointees to be terminated for inefficiency should, perhaps, also be more specifically spelled out?
- d. Would it be possible legally to require an AFSA appointee to sign a resignation upon EOD which would be post-dated by Security Control or by Personnel at such time as termination action was decided necessary in the interest of National Security?
- e. If the recommended Board set-up were approved for the Director, AFSA, would the Civil Service Commission require more information than a copy of the personnel action?
- f. Can the authority to administer PL 733 be delegated by the Secretary of the Army under the Department of Defense Legislative Program of 1950?

7/24/51
13. This matter will take careful handling. Pending publication of Interdepartmental Security Policy (which went to the National Security Council to-day but is still in very preliminary form), AFSA must have some authority on which to operate. Further, in the interdepartmental document, the problem of the cryptologic activities is not covered - should it be?

14. The matter of homosexuals in government can still be handled by AFSA in accordance with current procedures. (Civil Service and Service regulations governing "unsuitability.")

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