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Background for Procedures and Guidelines
for review of the Presidential Papers.

ENCLOSURES FILED OVERSIZE ATTACHMENTS 17421

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**PROCEDURES AND GUIDELINES
FOR REVIEW OF THE PRESIDENTIAL RECORDS
CREATED BY THE REAGAN ADMINISTRATION**

OVERVIEW

Review is the process of identifying and segregating materials that are to be temporarily closed to researchers. Normally, review is performed after the material has been properly arranged, so that the file identification for material to which access is to be denied can parallel that of material which will be made available to researchers. In this way, review can serve as a supplement to and a quality control check on processing of Presidential records.

The following are preliminary procedures and guidelines for use by those employees of the National Archives charged with reviewing and segregating into appropriate categories Presidential records under the Presidential Records Act. Because there has been no previous experience with reviewing and segregating records under the terms of the Presidential Records Act, both the procedures and the guidelines are of necessity tentative at this time.

The terms of the Presidential Records Act strike a balance between full public disclosure of documents of historical interest on the one hand, and the necessity of protecting personal privacy rights and the integrity of the President's policy-making process, as well as the confidentiality of sensitive government

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information (e.g., national defense information), on the other. Under the Act, after the earlier of either five years after President Reagan's term expires, the completion of the Archives processing of all Presidential records, or an earlier time period chosen by Archives upon the completion of the processing of certain file segments, documents are to be made available to the public unless they fall within one or more statutory or constitutional categories that restrict public access to Presidential records.

Statutory Restrictions: Under the Presidential Records Act, documents are to be restricted for 12 years if they fall within one of the six enumerated categories found in that Act and the President has requested that his documents be so restricted. President Reagan has requested that any documents falling within one of those six enumerated categories be restricted for 12 years. The Presidential Records Act also provides that documents that fall within one of nine enumerated categories under the Freedom of Information Act are also to be restricted.

The current task of the National Archives personnel is to describe and review these documents and determine which of them should be made available to the public in the near future (within five years after the expiration of President Reagan's term at the latest) and which ones fall within the restricted statutory categories found in the Presidential

Records Act or the FOIA. Documents which do not fall within a restricted category should be placed into "open files," documents that do fall within one or more restricted categories should be segregated into "closed files," appropriately marked with the applicable restriction(s).

Constitutional Restrictions: There is also a third category of documents to which access may be restricted -- documents which President Reagan or the then current President can assert a constitutional privilege (e.g., executive privilege). The Constitutional claims asserted to protect such documents must be made by either President Reagan or the then incumbent President. Archives reviewers are not responsible for segregating constitutionally privileged documents. Nonetheless, Archives is responsible for providing sufficient notice of any proposed release of President Reagan's papers to President Reagan and an incumbent President to allow a thorough review of the documents for privileged material prior to their release.

Under the Act, the Archivist has an affirmative duty to make Presidential records available to the public as "rapidly and completely as possible" "consistent with the provisions of this Act." This means that release of documents to the public is to be tempered by the Act's constraints on premature and inappropriate disclosure. Full consideration must be given to the President's desire to protect sensitive documents as well as his

desire to make the majority of the records of his Administration available to researchers as early as possible. If a document falls within one of the categories under which the President has elected to restrict access, Archives personnel are obligated under the Act to so restrict access to that document.

In segregating these documents, reviewers should remember that a decision to restrict access does not preclude access in the future. Because mistakes in restricting access to documents that should be made available to the public can be easily remedied (and with the passage of time will likely automatically be so remedied), while the untoward consequences of premature release can never be remedied and may act as a disincentive to continued full documentation by future Presidents, close decisions should be resolved in favor of restricting access to the document.

PROCEDURES

1. Before beginning actual review of any documents, reviewers must thoroughly familiarize themselves with the statutory criteria under which their review must proceed. These criteria are found in the Presidential Records Act of 1978 and the Freedom of Information Act. While the attached guidelines attempt to provide an easy reference for reviewers, they are not designed to be a substitute for a thorough understanding of the law.
2. Reviewers must also familiarize themselves with the personalities, issues and events of the Reagan Administration.
3. Reviewers will be provided with the file segments on which they are to work by a supervisor charged with keeping track of all files on which work by Archives personnel is being performed.
4. After receiving a file segment, reviewers should first do a preliminary review to determine whether the file segment may be opened or closed in its entirety without the usual page by page review. Any decision by a reviewer to open or close an entire file segment is preliminary and must be confirmed by a supervisor.

5. In general, documents are to be reviewed page by page. If the document contains restricted material, ordinarily the entire document should be restricted. Where possible, however, the reviewer must open useful nonrestricted segments of a document containing restricted material by sanitizing or redacting the restricted information. Reviewers should attempt to open portions of documents containing restricted information if and only if the document contains a significant enough amount of nonrestricted material to be useful and reviewers can open that material without compromising the restricted information.

6. Where a number of documents are fastened together to constitute a "letter case" (also called a "case file"), reviewers are to remove restricted documents or pages so that the rest of the case may be opened. Where the remaining nonrestricted material is inconsequential, reviewers should simply restrict the entire letter case.

7. Reviewers are to prepare withdrawal sheets for all closed material, under the specifications found in the attached section entitled "Review Withdrawal Sheets."

8. In addition to reviewing the documents provided by the appropriate supervisor, reviewers are also responsible for adequately describing those documents, as discussed in the earlier section entitled "Processing Guidelines."

9. Reviewers are also responsible for: (a) ensuring that all documents have been placed in their appropriate files and that all files have been placed in their appropriate box; (b) reproducing all deteriorating documents; (c) removing paper clips, rubber bands and other extraneous matter; (d) reproducing useful information for the vertical file; (e) transferring books, maps, audiovisual, and museum items to the appropriate location; (f) removing uniquely valuable items. See "Processing Guidelines."

10. After a review of each folder is completed, reviewers are to stamp, initial, and date that folder in the upper left corner of the front fold. Upon completed review of each box of folders, reviewers are to stamp, initial, and date the box in the lower righthand corner.

11. Upon completion of the above procedures for a box or some other segment of files, reviewers are to transfer the segment to a supervisor for review. Because of the potentially serious adverse consequences that could arise from premature or inappropriate disclosure of documents, supervisors should be particularly careful in reviewing files the reviewer has denominated as "open" files. Upon completing a review, a supervisor should stamp, initial, and date the box in the lower righthand corner directly above the similar markings made by the reviewer.

12. Upon completion of review by the appropriate supervisor, any document denominated as "opened" must then be provided to both President Reagan and the then current President for review for executive privilege or other privilege problems.

GUIDELINES FOR SEGREGATING DOCUMENTS

The criteria for restricting access to particular documents are found in the Presidential Records Act of 1978 and in the Freedom of Information Act. Reviewers should recognize that the guidance offered below is just that, guidance, and it will not cover every situation the reviewer will face. Overall, reviewers should rely on the law and use common sense in making judgments on whether to restrict access to or open particular records and should make sure that their initial judgment to open a document is confirmed by a supervisor.

As authorized by the Presidential Records Act, President Reagan in a letter to the Archivist, dated June 9, 1981, elected to restrict access for 12 years after the expiration of his term of office to Presidential records that fall within one or more of the six categories set forth in section 2204(a) of the Act. Under the Act, access to documents falling within one or more of those six categories must be restricted.

Under the Presidential Records Act, documents that do not fit within any one of the six enumerated restricted categories do not automatically become publicly available. Rather, those records are to be administered in accordance with the FOIA exemptions listed in the Presidential Records Act. (In addition, records that currently fit within one or more of the six categories will be administered in accordance with the FOIA after the 12-year

period expires.) Under the FOIA restrictions, records can and should be withheld from public disclosure if they fit within one or more of eight categories. A ninth category, FOIA exemption (b) (5) -- which protects "inter-agency or intra-agency memorandums or letters which would not be available by law to a party . . . in litigation with the agency" -- is not available as a basis for restricting access to Presidential records.

There are, in essence, 10 restricted categories altogether. Four of the 12 year restrictions on access to documents enumerated in the Presidential Records Act read verbatim like four of the applicable FOIA restrictions. Consequently, the law developed under the FOIA provides useful definition to these Presidential Records Act exemptions, as well as to the pure FOIA exemptions which have no enumerated Presidential Records Act counterpart.

Reviewers should understand, however, that, unlike under the FOIA, under the Presidential Records Act information that would otherwise fall within one of the exemptions may be made publicly available only if the President or one of his agents has through publication made the information available. For example, information that has been leaked to the press does not lose its protected status. Consequently, unless otherwise specified in the guidelines below, information in the public domain must still be protected under the six 12 year Presidential Records Act exemptions unless the reviewer knows that it was made public by the

President or by an advisor to the President acting in his or her official capacity.

As a general matter, reviewers should remember that these restricted categories represent Congress' attempt to protect vital constitutional and policy interests of both individuals and the government and should be given their full scope. Reviewers must be careful not to undermine the statute by making their own decisions to allow access to particular documents technically covered by one of the restrictions on the ground that access would not be harmful to any interest of which the reviewer is aware. Common sense should be employed in reading these restrictions and in making decisions as to whether documents do or do not fall within those restrictions. However, it is important to avoid the pitfall of using common sense to fashion "exceptions" to the restricted categories.

The 10 basic statutory restrictions on access are set forth below. For each enumerated category, some general guidance is provided to aid the reviewer in identifying the items that fall within that restriction. */

*/ Much of the guidance provided below comes from the Justice Department Guide to the Freedom of Information Act. Reviewers should thoroughly familiarize themselves with that guide and the case law discussed therein.

Access shall be restricted with respect to information in a Presidential record, within one or more of the following categories:

I. Exemption (a) (1) of the Presidential Records Act and (b) (1) of the FOIA: "(A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) in fact properly classified pursuant to such Executive order."

-- The requirements under Exemptions (a) (1) of the Presidential Records Act and (b) (1) of the FOIA are the same.

-- Reviewers must familiarize themselves with the requirements of Executive Order 12356.

-- Reviewers should presume that information bearing classification markings is appropriately classified. If it does not appear to be properly classified, the reviewer should bring it to the attention of an appropriate supervisor, who should seek the advice of the classifying agency.

o Security classified material should be conspicuously stamped "Top Secret", "Secret",

or "Confidential". These markings usually appear at the top and bottom of each page and may be accompanied by additional markings.

- o Classified documents may contain various markings unaccompanied by a normal security classification marking which may not be immediately intelligible. Such markings may appear at the top and/or bottom of the page or they may appear in the text of a document, often in capital letters. These markings or codewords often identify highly classified intelligence gathering systems or operations and are especially sensitive.
- o Material marked "Atomal", "Cosmic", and "NATO Restricted" are the NATO equivalents of U.S. classified markings and should be so treated.
- o Although security classified markings are intended to be highly visible, they often are not. This is particularly true with respect to cable messages and photocopied documents. Care must be taken in review of documents that may contain security information in order to identify such classified materials.

o Security classification markings should not be confused with administrative markings. Generally, documents containing no classification markings and stamped with markings of "Administratively Confidential", "Personal and Confidential", "Official Use Only", "Limited Distribution", or "Limited Official Use" while generally sensitive documents are not national security documents and materials thus labeled should be treated as unclassified, although the materials may fall within another of the restricted categories.

-- Sometimes documents that contain classified information are not properly marked. If reviewers see information they suspect should be marked as classified, it should be referred to the appropriate supervisor who should then request the views of the entity from whom the information was obtained. Information that should be considered for classification includes:

- o military plans, weapons, or operations;

- o the vulnerabilities or capabilities of systems, installations, projects, or plans relating to the national security;

- o foreign government information;

- o intelligence activities (including special activities), or intelligence sources or methods;

- o foreign relations or foreign activities of the United States; scientific, technological, or economic matters relating to the national security;

- o scientific, technological, or economic matters relating to the national security;

- o United States Government programs for safeguarding nuclear materials or facilities;

- o cryptology;

- o a confidential source; or

- o other categories of information that are related to the national security and that require protection against unauthorized disclosure as determined by the President or by agency heads or other officials who have

been delegated original classification authority by the President. Any determination made under this subsection shall be reported promptly to the Director of the Information Security Oversight Office.

CAUTION: INFORMATION FALLING WITHIN THIS RESTRICTED CATEGORY IS EXTREMELY SENSITIVE. ANY DOUBTS AS TO WHETHER OR NOT INFORMATION IS CLASSIFIED MUST BE RESOLVED IN FAVOR OF RESTRICTING ACCESS. MOREOVER, REVIEWERS ARE PROHIBITED FROM DISCUSSING SUCH INFORMATION OR SHARING IT IN ANY WAY WITH ANYONE, INCLUDING FELLOW REVIEWERS, OTHER THAN A SUPERVISOR WITH THE NECESSARY CLEARANCES.

II. Exemption (a)(2) of the Presidential Records Act:
"relating to appointments to Federal office."

-- Information of any type provided by an individual applying for an appointed federal office should be restricted under this category unless it has been made publicly available by the candidate or through official Administration channels. Types of information include, but are not limited to: employment applications, resumes and letters of inquiry as to job vacancies, disclosure forms, statements of political affiliations.

- Information provided by a third party on a candidate for appointed federal office whether it is favorable or unfavorable to the candidate should be protected under this category.

- Information on any reaction to or action taken by the government on the appointment, including performance evaluations, job interview write-ups, information on whether or not the candidate obtained a security clearance, or passed or failed a pre-appointment conflict of interest test, should be protected under this category.

III. Exemption (a) (3) of the Presidential Records Act and (b) (3) of the FOIA: "Specifically exempted from disclosure by statute (other than sections 552 and 552b of title 5, United States Code), provided that such statute (A) requires that the material be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of material to be withheld."

- A statute falls within the exemption's coverage if it satisfies any one of the three disjunctive requirements.

-- Statutes falling within category A include but are not limited to:

- o 6(e) of the Federal Rules of Criminal Procedure, which regulates disclosure of matters occurring before a grand jury;
- o Rule 32 of the Federal Rules of Criminal Procedure, governing the disclosure of presentence reports;
- o Sections 8(b) and 9(a) of the Census Act, which regulates data regarding population, agriculture and housing;
- o Section 3104(c) of the International Investment Survey Act of 1976;
- o Section 2055(a)(2) of the Consumer Product Safety Act, protects the same information as protected under (a)(4) of the Presidential Records Act and (b)(4) of the FOIA;
- o Section 2518(8) of the Omnibus Crime Control and Safe Streets Act of 1968, which regulates disclosure of contents of wire tap intercepts.

-- Statutes falling within category B include, but are not limited to:

- o Section 2055(b)(1) of the Consumer Product Safety Act, which requires prior notice to manufacturers or labelers of information to be publicly disclosed that might disclose the identify of the manufacturer or labeler;
- o Section 403(d)(3) of the National Security Act, which requires the Director of the CIA to protect "intelligence sources and methods;"
- o Section 2411(c)(1) of the Export Administration Act, which governs the disclosure of export licenses and applications;
- o Section 777 of the Tariff Act, governing withholding of "proprietary information;"
- o Section 12(d) of the Railroad Unemployment Insurance Act;
- o Section 122 of the Patent Act, concerning patent applications and information concerning them;

- o Section 7114(b)(4) of the Civil Service Reform Act, concerning the confidentiality of certain labor relations training and guidance materials;
 - o Section 301(g) of the Collection and Publication of Foreign Commerce Act and Section 2411(c) of the Export Administration Act of 1979, both pertaining to shippers export declarations;
 - o Section 130 of the Department of Defense "technical data" statute, governs disclosure of data with military or space application;
 - o Section 12 of the Commodity Exchange Act.
- Statutes falling within both categories include, but are not limited to:
- o 18 U.S.C. § 1202(f), pertaining to the issuance or refusal of visas and permits to enter the United States;
 - o § 6103 of the Internal Revenue Code, concerning tax return information.

IV. Exemption (a) (4) of the Presidential Records Act and (b) (4) of the FOIA: "trade secrets and commercial or financial information obtained from a person and privileged and confidential"

- The requirements under Exemption (a) (4) of the Presidential Records Act and (b) (4) of the FOIA are the same.

- Reviewers must familiarize themselves with the requirements of Executive Order 12600: "Predisclosure Notification Procedures for Confidential Commercial Information."

- Before making any commercial or financial information public, the reviewer must notify the submitter, in order to obtain his or her position on disclosure (See E.O. 12600).

- This exemption covers two broad categories of information:
 - o trade secrets;

 - o information which is (1) commercial or financial, (2) obtained from a person, and (3) privileged or confidential.

-- With respect to the first category:

- o A trade secret is judicially defined as "a secret, commercially valuable plan, formula, process, or device that is used for the making, preparing, compounding, or processing of trade commodities that can be said to be the end product of either innovation or substantial effort."

-- With respect to the second category:

- o Any information that relates to business or trade is considered to be "commercial or financial." Commercial information can include material submitted by a nonprofit entity. Examples of items regarded as commercial or financial include: business sales statistics, research data, technical designs, customer and supplier lists, profit and loss data, overhead and operating costs, and information on financial condition.
- o Protection for financial information is not limited to economic data generated solely by corporations or other business entities: it

been held to apply to personal financial information as well.

- o The term "person" refers to a wide range of entities, including corporations, state governments and foreign governments. It does not, however, apply to the federal government, although government documents containing information supplied by outside sources is covered.

- o Commercial or financial matter is "confidential" "if disclosure of the information is likely to have either of the following effects:"
 - to impair the government's ability to obtain necessary information in the future. That is, the business provided the information voluntarily and would not have provided it if it were subject to disclosure;

 - to cause substantial harm to the competitive position of the person from whom the information was obtained. Examples include assets, profits, losses and

market share, data describing a company's workforce which would reveal labor costs, selling prices, purchase activity, etc.; or

-- to impair other government interests, such as program effectiveness and compliance.

CAUTION: BECAUSE THE TRADE SECRETS ACT, 18 U.S.C. § 1905 -- A BROADLY WORDED CRIMINAL STATUTE -- ESSENTIALLY COVERS ALL DATA PROTECTED BY THIS EXEMPTION, RELEASE OF OTHERWISE EXEMPT MATERIAL COULD CONSTITUTE A CRIMINAL OFFENSE.

V. Exemption (a) (5) of the Presidential Records Act:

"Confidential communications requesting or submitting advice, between the President and his advisors, or between such advisors."

-- Exemption (a) (5) protects records of an advisory nature that were generated by or for the President or among his staff. This includes, but is not limited to, policy and legal advice. It should be presumed that such records were intended to embrace confidential communications, unless the circumstances clearly indicate that confidentiality was not intended -- as a general matter, advice is sought by and provided to the President and his

advisors with the understanding that the requests and advice will remain confidential. Records protected under this exemption include:

- o All policy, legal or similar advice provided to the President by an employee or consultant of the Executive Branch.
- o All requests for policy, legal or similar advice from the President to any employee or consultant of the Executive Branch.
- o All policy, legal or similar advice provided by a member of the White House staff or other employee or consultant of the Executive Branch to another member of the White House staff or other employee or consultant of the Executive Branch.
- o All requests for policy, legal or similar advice made by a member of the White House staff to another member of the White House staff or other employee or consultant of the Executive Branch.

-- This exemption protects all formats of documentary materials containing advice or requests for

advice, including final memoranda, draft memoranda, notes from meetings, letters, etc.

- Records falling within the advice or request for advice categories should be "closed" regardless of whether they contain any administrative marking (e.g., Administratively Confidential, Limited Official Use Only, Eyes Only) or any other indication in the record itself that it was meant to remain confidential.

VI. Exemption (a) (6) of the Presidential Records Act and (b) (6) of the FOIA: "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy."

- Exemption (a) (6) of the Presidential Records Act is broader in scope than Exemption (b) (6) of the FOIA. While FOIA law requires balancing the privacy interest to be protected under (b) (6) against the benefits to the public of disclosure, no such balance is required for (a) (6) of the Presidential Records Act. Under the Presidential Records Act, the balance is struck by removing the (a) (6) restriction altogether after 12 years.
- This exemption has two requirements:

- o First, information must be in either "personnel," "medical" or "similar" files, and
- o Second, disclosure must constitute "a clearly unwarranted invasion of personal privacy."

-- Under the first requirement:

- o Information must pertain to a specific individual;
- o The term "similar files" is to be interpreted broadly. All information which applies to a particular individual meets the first requirement for protection.

-- Under the second requirement:

- o Generally, only individuals, not corporations or associations possess protectable privacy interests, except when a corporation or entity is virtually an "alter ego" for an individual. Caselaw protects the release of information that would readily identify an individual;

- o Where the information is particularly well-known or unquestionably within the public domain, the privacy interest while not automatically eliminated may not exist;
- o Examples of information to be protected include details concerning marital status, legitimacy of children, medical condition, welfare payments, family fights and reputation, religious affiliation, citizenship, criminal histories;
- o This exemption protects favorable as well as unfavorable information. For example, details of an individual's outstanding performance evaluation.
- o Information on the personal details of a federal employee's service is also to be protected. Examples of such information include employee's home address, names of persons on a reduction-in-force list, contents of an FBI investigation concerning federal judicial appointment or appointment to the Executive Branch, job performance evaluations;

- o Individuals who write to the government generally do so with some expectation of confidentiality. Their identities but not necessarily the substance of their letters should be protected.

- o While all persons are to be presumed to be living, death often extinguishes the privacy rights of deceased persons, although their surviving family members or close associates may have privacy interests in sensitive personal information about the deceased;

- o Unlike under exemption (b)(6) of the FOIA, under exemption (a)(6) of the Presidential Records Act, the privacy interest is not to be balanced against the public interest in disclosure.

VII. Exemption (b)(7) of the FOIA: "records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an

impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identify of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual."

-- Information protected under this exemption must meet two requirements:

- o first, the information must have been compiled for law enforcement purposes;

- o second, the disclosure of such must threaten one of the enumerated harms found in the exemption's six subparts.

-- Under the first requirement:

- o All information compiled for law enforcement purposes, regardless of the physical format, is protected. If originally compiled for law enforcement purposes, the information does not lose its protected status merely because it is maintained in or recompiled in a non-law enforcement record. However, information not initially compiled for a law enforcement purpose may nonetheless qualify for protection if it is subsequently recompiled for a valid law enforcement purpose.
- o Law enforcement includes both civil and criminal statutes, as well as statutes authorizing administrative proceedings.
- o Any record of a criminal law enforcement agency if even arguably related to law enforcement should presumptively be protected.

- o Records compiled to enforce state law as well as federal law should be protected.

- o Included in the category of "law enforcement" information are: (1) investigations of attorneys' professional conduct; (2) background security investigations by government units such as FBI investigations of applicants for federal employment or CIA background investigations; (3) law enforcement manuals; and (4) program oversight reports.

-- Under the second requirement:

- o Information is to be protected under A if it "could reasonably be expected to interfere with enforcement proceedings". Whether information falls within category A requires a two-step analysis.

--- first, it requires either pending or prospective law enforcement proceedings;

--- second, release of information about that proceeding will be protected if it could reasonably be expected to cause some articulable harm. In making this

determination, reviewers must consult with the particular law enforcement agency involved.

- o Information is to be protected under B if it "would deprive a person of a right to a fair trial or an impartial adjudication.

- o Information is to be protected under C if it "could reasonably be expected to interfere with enforcement proceedings". Whether information falls within category C requires a two-step analysis:

--- First, there must be a privacy interest at stake.

... It is generally recognized that the mention of an individuals' name or other information that would be sufficient to identify an individual in a law enforcement file is likely to constitute an invasion of privacy.

... Federal, state and local law enforcement personnel have a

privacy interest in having references to them in investigatory files protected as do individuals who provide information to law enforcement agencies.

... The names of witnesses, their home and business addresses, and their telephone numbers have been held properly protectable under 7(c).

... The exemption cannot be invoked to shield the fact that a third party has been investigated once the agency has publicly confirmed the existence of an investigation.

--- Second, the privacy interest must be balanced against the public interest that would be served by disclosure.

... The public interest favors nondisclosure under certain circumstances, including avoiding impairment of ongoing and future law enforcement investigations.

... The public interest in disclosure must be very significant to overcome legitimate privacy interests.

o Information is to be protected under D if it "could reasonably be expected to disclose the identity of a confidential source, including a state, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a "confidential source". This category offers broad protection.

--- The statutory enumeration is not exhaustive. The term "source" includes a broad variety of individuals and institutions not legislatively specified, such as citizens providing unsolicited allegations of misconduct.

--- "Confidentiality" in this instance need not be the result of an express promise

but may be inferred from the circumstances.

--- These protections cannot be lost through the mere passage of time. For example, the safeguards of D remain undiminished by the death of the source.

o Information is to be protected under E "which would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law." Category E provides two distinct protections.

--- Under the first clause, law enforcement records, to the extent that they can be fairly regarded as reflecting techniques or procedures, are entitled to categorical protection.

--- Under the second clause, law enforcement guidelines which satisfy the broad "could reasonably be expected to risk

circumvention of law" standard can be protected.

- o Information is to be protected under F if it "could reasonably be expected to endanger the life or physical safety of any individual." Although coverage under category F may in large part be duplicative of that afforded by category C, F is potentially broader in scope than C because no balancing of the public interest is required for withholding.

VIII. Exemption (b) (8) of the FOIA: "contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions."

-- Stock exchanges are considered to be "financial institutions."

-- Among the types of documents covered by this exemption are bank examination reports and related documents of both federal and State and regulatory agencies and reports examining bank compliance with consumer laws and regulations.

-- The protection afforded by this exemption covers records on financial institutions that are no longer in existence.

IX. Exemption (b) (9) of the FOIA: "geological and geophysical information and data, including maps, concerning wells."

X. Exemption (b) (2) of the FOIA: "related solely to the internal personnel rules and practices of an agency."

-- This exemption has been interpreted by the courts to allow the withholding of a great variety of internal rules, procedures and guidelines, not simply those related to personnel matters.

-- This exemption generally has been interpreted to encompass the following two distinct categories of information:

- o internal matters of a relatively trivial nature, that are of no genuine public interest;
- o more substantial internal matters the disclosure of which would allow circumvention of a statute or agency regulation;

o among the types of records that should be withheld under the category protecting against circumvention of a statute or agency regulation are: (1) general guidelines for conducting investigations; (2) law enforcement manuals setting out guidelines for criminal investigations; (3) guidelines concerning when to pursue an investigation; (4) agreements between state and federal agencies concerning when to exchange information relevant to potential tax law violations; (5) computer codes used by law enforcement agencies; and (6) hiring plans and job applicant testing materials.

-- Under the "mosaic" theory, information which would not by itself reveal sensitive law enforcement information should nonetheless be protected to prevent damage that could be caused by the assembly of different pieces of similar information. For example, while the release of any one individual's tax score would not disclose how tax returns are selected for audit the routing release of such scores would enable the sophisticated requester to discern, in the aggregate, the audit criteria, thus facilitating circumvention of the tax laws.

REVIEW WITHDRAWAL SHEETS

Documents that contain restricted information will be removed and a withdrawal sheet prepared, comprised of an original and at least one copy.

The exact original file location from which an item was removed should be marked by a document/page location sheet so that the item may be replaced when it is opened.

1. A withdrawal sheet and as many copies as necessary to properly control withdrawn materials should be prepared for each folder containing material that is to be removed. The original withdrawal sheet is filed in front of the folder which contained the restricted material, and the control copy is attached to or placed with the removed material from each folder in a segregated parallel file.

The withdrawal sheet, commonly called a "pinksheet", fulfills three functions: provides the researcher with the information that restricted material has been withdrawn; provides the researcher with sufficient information to identify items for restriction appeals and mandatory review; and assists the library staff in maintaining archival control over the removed material. To assure proper refileing, the control copy should be retained with the removed documents at all times.

2. The withdrawal sheet is essentially a listing of items withdrawn. For each folder, all withdrawn items are numbered in the left or first column in sequence: 1, 2, 3 ... etc.. When more

DOCUMENT NUMBER = 169119CA

OPID WS
DOCDATE 850118
NAME LARRY HERBOLSHEIMER
ORG OFFICE OF CABINET AFFAIRS
SUBJECT MEMO TO THE PRESIDENT FROM WILLIAM BROCK
 REQUESTING A PROCLAMATION REGARDING BAHAMAS & CBI
SUBCODE C0012 F0003-02 C0001-09 FEO09 FG006-11 FG006-15
INDCODE 1120
ACTION 990MB RAA 850118 ATTN: JOHN COONEY C
COMMENTS PLEASE START THE PROCESS MOVING TO DEVELOP AND COMPLETE A
 SUITABLE PROCLAMATION ON THE ABOVE SUBJECT - OUR CONTACT
 AT USTR IS JON ROSENBAUM

than one item is withdrawn from a single letter case, however, those particular items share the same number and are differentiated by letter 3a, 3b, 3c ... etc.. The letter case sequence is preceded in the first column by an underlined designation "ltr. case".

3. The withdrawal sheet will contain an entry for each document removed, except as noted below. If the entire contents of a file folder are restricted, a new folder containing only the withdrawal sheet should be substituted in its place. When the contents of an entire box are removed, a withdrawal sheet for the entire box should be foldered and placed in a properly labeled box in sequential order with the open material. When the contents of an entire series are removed, the withdrawal sheet for the series should be foldered and placed at the end of the preceding box. Withdrawal sheets for entire boxes and series need not list each item withdrawn. Instead, a notation to the effect that the entire box or series has been withdrawn will be inserted.

4. In instances of which a number of fairly routine documents of the same type within a folder, an entire folder, or even a box, are closed for the same reason, a summary description of the following kind may suffice: "20 letters from the general public relating to loss of medicare benefits" or "30 letters of inquiry relating to jobs in the FBI."

DOCUMENT NUMBER = 293814

OPID PY
DOCDATE 850124
RECTYP HBA
MEDIA 0
STAFF EDMUND HAWLEY
IAHAWL
NAME MR. ROBERT R. REILLY
ORG THE WHITE HOUSE
ADDR WASHINGTON DC 20500
SUBJECT BRIEFINGS ON CENTRAL AMERICA AND SDI
(STRATEGIC DEFENSE)
SUBCODE MCO03
C0001-09 NDO18
INDCODE 1110
ACTION RM RSZ 850220 C 850220

5. In the space provided for the file location, the following information should be included: the group or collection title; series title; folder title; and any other pertinent information necessary to ensure correct refiling.

The reviewer reviewing the material will also initial and date the control copy of each withdrawal sheet in the right margin of the file location block.

6. When reviewing collections with security classified materials, the library staff will separate classified material from non-classified documents. Withdrawal sheets will reflect the classification level of the withdrawn material. A separate file will be kept of copies of withdrawal sheets containing references to Top Secret materials for the Top Secret inventory, as required by ISOO Directive Number 1.

7. It is the policy of the National Archives to provide researchers with as much information on restricted materials as possible without divulging information prejudicial to the reason for restriction. The withdrawal sheet therefore allows space in the first column for document identification or form (letter, memo, report); in the second column for name of correspondents or title; and in the third column for the date. If the reviewer feels that providing such information would compromise security-classified or restricted information, either an abridgement can be made (e.g., "Letter to President, May 3, 1983;" or "Memo, Reagan to William Casey"), or the original

DOCUMENT NUMBER = 274483

OPID LW
DOCDATE 850130
RECTYP IBA
MEDIA L
STAFF PRESIDENT REAGAN
PRREAG
NAME MISS JOAN L. HUETER
TITLE PRESIDENT
ORG NATIONAL ASSOCIATION OF PRO AMERICA
STREET 2230 CALIFORNIA STREET, NW
ADDR WASHINGTON DC 20008
SUBJECT SUPPORTS PROGRAM IN CENTRAL AMERICA,
OBJECTS TO PLAN TO SEND MILITARY ASSISTANCE
FOR TRAINING MOZAMBIKAN MILITARY FORCES
SUBCODE F0003-02
C0108 C0001-09
INDCODE 4900
RPTCODE PL
ACTION PLREIL ORG 850206 C 850506
99DOS RAR 850508 A 850523

withdrawal sheet can remain blank except for a note that an item has been withdrawn ("Item withdrawn").

Never cite any National Security Agency document except by control number. Also, never give the title of: any CIA report or study, National Security Study Memorandum (NNSM), National Security Decision Memorandum (NSDM), National Security Council Intelligence Directive (NSCID). Occasionally, an abbreviation of the security classification level appears next to the title. Even identification by number (e.g., "NNSM 247") may in the context of surrounding material reveal more than is proper. These prohibitions are necessary because the very existence of a document may be classified. In such instances, the reviewer may simply note on the pinksheet "Item withdrawn". When in doubt, consult with your supervisor.

8. Also in the second column, if the item is being withdrawn for national security reasons show exact number of pages of the item if more than one page.

When the reviewer restricts an unmarked item because its content is virtually identical to that of a nearby security classified item, he may indicate "(open when item ____ declassified)".

9. In the third column show the date of the items. If an item is undated, so indicate (n.d.).

DOCUMENT NUMBER = 288452

OPID RS
DOCDATE 850205
RECTYP IBA
MEDIA L
STAFF PRESIDENT REAGAN
PRREAG
NAME MR. MICHAEL D. GLEASON
TITLE CITY MANAGER OF EUGENE
STREET POST OFFICE BOX 1967
ADDR EUGENE OR 97440
SUBJECT INFORMS OF RESULTS OF EUGENE, OREGON LOCAL
BALLOT MEASURE CALLING FOR HALT TO U.S.
MILITARY AID TO CENTRAL AMERICA
SUBCODE F0003-02
C0001-09
INDCODE 2600
RPTCODE IA
ACTION IAALVA ORG 850211 LV A 850228
99DOS RAR 85C307 ATTN: IGA A 850325

10. The final column on the form allows space for a letter designation (A-J) of the restriction authority, and the classification level of the withdrawn item (A-C, A-S, or A-TS). Restricted Data and Formerly Restricted Data should be indicated as follows: A-TS(RD). Interpretation of the restriction code is located at the bottom of the withdrawal sheet.

11. When restricted material is returned to the original file, the entry on the original withdrawal sheet and the control copy will be lined out and the date the material is opened will be recorded next to the lined out entry. The person lining out an entry will initial each action.

12. When all restricted material listed on a withdrawal sheet has been returned to the file, all control copies will be destroyed, but the original copy will be retained as a permanent record of restrictions and openings. This record will be available to researchers.

DOCUMENT NUMBER = 299974

OPID PY
DOCDATE 850209
RECTYP HBA
MEDIA 0
STAFF MICHAEL UHLMAN
PDUHLIM
NAME MR. DANIEL F. LEONARD
ORG THE WHITE HOUSE
ADDR WASHINGTON DC 20500
SUBJECT SUGGESTED AGENDA ITEMS FOR CABINET COUNCIL
MEETING
SUBCODE FGO10-02
HE006-01 JL003 C0001-09 FGO12-02
INDCODE 1110
ACTION RM RSZ 850315 C 850315

WITHDRAWAL SHEET

(Ronald W. Reagan Library)

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
FILE LOCATION			

RESTRICTION CODES

- A. National security classified information.
- B. Release would violate a Federal statute.
- C. Release would disclose trade secrets or confidential commercial or financial information.
- D. Release would constitute a clearly unwarranted invasion of personal privacy.
- E. Relating to appointment to Federal office.
- F. Release would disclose confidential advice between the President and his advisors, or between such advisors.
- G. Release could disclose internal personnel rules and practices of an agency.
- H. Release would disclose information compiled for law enforcement purposes.
- I. Release would disclose information concerning the regulation or supervision of financial institutions.
- J. Release would disclose geological or geophysical information concerning wells.

RONALD W. REAGAN LIBRARY

**THIS FORM MARKS THE FILE LOCATION OF ITEM NUMBER _____ LISTED ON THE
WITHDRAWAL SHEET AT THE FRONT OF THIS FOLDER.**