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cc: Files

✓ Mrs. Gauf ✓
Miss Lawton

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MAY 6 1975

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over 5/6/75

DEA/State Intelligence Studies
and the Privacy Act

This is in response to your memorandum of April 29, 1975 raising three questions concerning the applicability of the Privacy Act of 1974 to DEA intelligence studies, such as the Ohio study, a copy of which you furnished. For the reasons given below, it is our view that: 1. the studies are not systems of records within the publication provisions of the Act; 2. DEA is required to account only for its disclosures, not those of another agency; 3. if the studies were prepared by States, DEA would only be obligated to account for such information on individuals as it furnished any State.

Records system: While the studies contain information relating to individuals by name, and occasionally address, they are not retrievable by name in the usual sense of the word. There is no master alphabetical index of individuals in the study although an alphabetical list of certain individuals is included on page 84. In my view it is more accurate to view the study as a report compiled from systems of records, rather than a system in itself. While the underlying system of records from which the information was obtained may have to be described in a notice, the study itself need not be described as a system of records.

It is important to point out in this connection, however, that the preparation and disclosure of these reports may have to be described as a "routine use" of the information contained in DEA intelligence systems.

Accounting: As you recognize, an accounting will have to be kept of the disclosure of these studies and that accounting must ultimately be relateable to each individual name in

the study. As I read the Act, DEA is obligated to account only for disclosures it makes, not for disclosures made by distributees. The accounting must include the "purpose of each disclosure." Where bulk distribution is made to a State agency the fact that further distribution by the State is to be made may have to be listed as a purpose of the DEA disclosure.

State preparation: If DEA were to contract with a State to produce such a report in order to assist DEA in carrying out its intelligence responsibilities, the contractor provision of subsection (m) might apply. We take your question to refer, however, to a truly independent study done by a State for its own benefit with DEA merely cooperating. If that is what is contemplated, then neither the publication nor accounting requirements would apply to the study itself but DEA would be required to account for any information on individuals it supplied to the State doing the study.

Other effects of the Act: It seems to us that the most serious question raised by the studies is their compliance with subsection (e)(6) of the Act requiring that information disclosed be accurate, complete, timely and relevant. The report states as a fact the involvement of individuals in drug trafficking in certain cities although in many, if not most, cases, this "fact" has not been established in a court of law. I have serious doubts that this meets the accuracy requirement of the statute. Moreover, there are references to individuals which indicates that files have been closed or that the information contained in the files is dated. This raises the question whether the information is "timely" as required by the statute. Wholly apart from the publication and accounting provisions, the Act may well prevent the distribution of such studies outside DEA in the future.

Serious consideration should be given to revising the format of the reports to deal only with patterns of drug distribution rather than named individuals or eliminating the program.