

JMH:JNG:jal

cc: Gavin
Hull
Retrieval
Files

MEMORANDUM FOR THE ATTORNEY GENERAL

Re: Policy on disclosure of information

Recent events, particularly the question of the release of informants' identities in the Socialist Worker Party litigation, have made it evident that the meaning of the Department's current regulations on the release of information is unclear in certain litigation situations. The purpose of this memorandum is to request your approval for the formation of a working group to clarify these regulations and establish a definite Department policy in this area.

It appears that the Department's current regulations which establish the chain of authority for approval of the release of Department information, 28 CFR § 16.21 et seq. (copy attached), are interpreted in varying ways by different components of the Department. One interpretation is that the regulations requiring prior approval by certain designated Department officials apply to all situations where there is a legal demand for information in Department files. While the broad language of the pertinent provisions would support such a view, the regulations under this interpretation would not make any distinctions which may be required by the varying circumstances in which demands for information might be made. A second interpretation of the regulations is that they require prior approval by the designated Department officials only in litigation not involving the government or an agency, officer or employee that the Department is representing. While this interpretation would alleviate what might otherwise be an onerous burden in conducting governmental litigation, no such limitation is apparent on the face of the regulations. Moreover, this interpretation would leave certain sorts of demands for information -- e.g. Congressional requests, discovery in cases where the government is a party -- uncovered altogether in the regulations. In short, under this

interpretation it is not clear which Department official, if any, must approve the release of information in response to such demands.

We believe that, at the very least, the current regulations should be amended so as to clarify the sorts of situations to which they are applicable. Moreover, we believe that it would be advisable to attempt to formulate guidelines concerning the Department's policy with respect to disclosure of information in all of the different litigation contexts.*/ We would note that a similar effort was undertaken under Attorney General Levi, but the guidelines formulated in that process were not placed before him until his last days in office and were never signed. With your approval, we will renew this effort to clarify and establish Department policy with regard to disclosure of Department information in response to demands made in litigation.

I have consulted with the Assistant Attorneys General in charge of the Civil Division, the Criminal Division, and the Office of Legislative Affairs, and they all concur in this proposal.

John M. Harmon
Assistant Attorney General
Office of Legal Counsel

*/ An effort to formulate guidelines with respect to disclosure of information to the Congress ended when it became clear that no set of guidelines could be formulated which would be acceptable to both the Department and the Congress. We do not propose here that this effort be renewed.