

7 *Mr. Caplan*  
4  
4 J. Walter Yeagley, Chairman

4 Interdepartmental Committee on Internal Security

4 J. Lee Rankin, Assistant Attorney General

4 Office of Legal Counsel

4 Authority under Executive Order No. 10501 to declassify information.

4 DEC 22 1955

4 ~~File~~

*To Yeagley*

*12/22*

In your memorandum of November 29, 1955, you request my advice as to whether Executive Order No. 10501 (18 F.R. 7049) places any responsibility upon an agency which is subject to the provisions of section 2(a) of the order to declassify security information which under Executive Order No. 10290 (16 F.R. 9795) it may previously have classified in a category higher than that of "Restricted".

In your memorandum you refer to an early draft of Executive Order No. 10501 which contained a proposed section 16 which would have provided authority for such an agency to downgrade or declassify information which it had theretofore classified under Executive Order No. 10290, *supra*. It appears that such a proposed section was deleted before a draft of Executive Order No. 10501 was submitted to the President, and before he had that draft distributed on June 17, 1953, for review by the heads of all agencies and departments and the submission to the Attorney General of any comments on that draft. Only 2 of the 28 agencies which are subject to the provisions of section 2(a) of Executive Order No. 10501, the Export-Import Bank of Washington and the War Claims Commission (now the Foreign Claims Settlement Commission) (Reorganization Plan No. 1 of 1954, 19 F.R. 3985), submitted such comments, but they did not raise a question as to the advisability of including in the Executive Order any such provision as that referred to in your memorandum, D. J. File No. 146-41-04, section 3.

It will be observed that the agencies subject to the provisions of section 2(a) "shall have no authority for original classification" of information or material under the order, and that the departments and agencies subject to the provisions of section 2(b) and (c) have "authority for original classification" of information or material under the order. Section 4 of the order authorizes heads of departments or agencies "originating classified material" to make provision for declassifying, downgrading, and upgrading it. The use of the phrase "authority for original classification" in section 2(b) and (c) and of the phrase "originating classified material" in section 4 would seem to indicate that the heads of departments and agencies referred to in section 4 are the heads of those departments and agencies having authority for original classification.

Hence it is believed that the provisions of section 4 should not be construed as providing authority for the head of an agency subject to the provisions of section 2(a) to take administrative action under sec. 4(a) to downgrade

or declassify information which it may previously have classified under Executive Order No. 10290, supra. As you point out in your memorandum, any downgrading action, short of declassification, by such an agency would be tantamount to an "original classification" or to "originating classified material" under Executive Order No. 10501, supra. Any such action would be in contradiction of the status of such agencies under sec. 2 (a) of the Order as agencies lacking authority for original classification. Moreover, lack of authority to exercise the lesser function of downgrading classified information would seem to preclude the exercise of the greater function of its declassification.

In view of this conclusion that sec. 4 is not applicable to an agency subject to the provisions of sec. 2(a) of the Order, it would likewise seem that the provisions of sec. 18 of the Order with respect to its implementation within the department or agency are only applicable to a department or agency subject to the provisions of sec. 2(b) or (c) of the Order. Consequently, I am of the opinion that this Order does not place any responsibility upon an agency which under sec. 2(a) is not authorized to classify defense information to downgrade or to declassify security information which it may previously have classified under Executive Order No. 10290, supra.

In your memorandum you also ask whether the "intent" of sec. 2 of Order No. 10501, supra, provides a mechanism whereby the President could in furtherance of that intent instruct an agency subject to the provisions of sec. 2(a) to declassify security information which it had previously classified under Executive Order No. 10290, supra. The intent of this section appears to be to divide all departments and agencies into one of three categories with reference to their "authority to classify defense information or material under this Order". Such an intent does not appear to relate to declassification by an agency subject to the provisions of sec. 2(a) of security information which it may previously have classified under Executive Order No. 10290, supra.

This conclusion is not intended, however, to constitute an expression of opinion as to whether it would be more appropriate for the President to issue an instruction to an agency subject to the provisions of sec. 2(a) of Executive Order No. 10501 to declassify such information in preference to issuing an amendment to the Order to provide that it shall do so. It should also be noted that your memorandum does not indicate whether any such presidential action might create administrative problems with respect to any security information which should only be downgraded rather than declassified.

As to the amount of any such classified information that there may be, your attention is invited to the House Committee print, Replies from federal agencies to questionnaire submitted by the special subcommittee on government information of the Committee on Government Operations, November 1, 1955, 84th Cong., 1st Sess. Of the 28 agencies designated as subject to the provisions of sec. 2(a) of Executive Order No. 10501,



the committee print reproduces the answers of all but five: (1) Arlington Memorial Amphitheater Commission, (2) Committee on Purchases of Blind-Made Products, (3) Committee for Reciprocity Information, (4) Missouri Basin Survey Commission, and (5) National Forest Reservation Commission. The answer of the Department of Agriculture encompasses the Commodity Exchange Commission.