

Mrs. Copeland

146-41-012-5

- 4 William F. Tompkins, Assistant Attorney General
- 4 Internal Security Division
- 4 J. Lee Rankin, Assistant Attorney General
- 4 Office of Legal Counsel
- 4 Dissemination of information made available to the Commission on Government Security.

~~Internal Security~~

To Internal Security
6/21

This refers to your memorandum of May 29, 1956, requesting my opinion upon whether the Commission on Government Security is subject to the provisions of Executive Order 10501, relating to the safeguarding of defense information.

Your request for my views is predicated upon doubt as to whether the Commission is within the Executive Branch of the Federal Government and, therefore, properly subject to an Executive Order. I note that your Division is inclined to the view that the Commission is not bound by the Executive Order.

The Commission on Government Security/1/ was created by Public Law 304, approved Aug. 9, 1955, 69 Stat. 595, to "study and investigate the entire Government security program." The Commission is directed also to submit reports and recommendations with respect to the internal consistency of the security program and effective protection and maintenance of the national security. (Sec. 6.) The Commission is composed of twelve members, four of whom are appointed respectively by the President, the President of the Senate, and the Speaker of the House. The Act requires four members of the Commission to be from the Senate and the House of Representatives, two from the executive branch and six from private life (Sec. 2).

In a memorandum to the Deputy Attorney General dated April 19, 1955, commenting on H. J. Res. 154 and H. J. Res. 157 "to establish a Commission on Government Security," I pointed out (p. 3) that

10 "The composition of the Commission and its duties lead me to the view that, like the Commission on Organization of the Executive Branch of the Government and unlike the Commission on Intergovernmental Relations, the proposed Commission on Government Security should be regarded as an entity basically legislative in its nature in which the

CH/##FN1

Sections 7(b) and 8 of the act creating the Commission were discussed in my memorandum to you of September 30, 1955. See also my memoranda to the Deputy Attorney General of April 19, 1955 on H. J. Res. 154 and 157 to establish the Commission (Dept. File 13-01-1h), and of August 1, 1955 on the enrolled bill (H. J. Res. 157) to establish the Commission.

7 President has merely been invited to have representation because of his interest in the field of its activity." /2/

Executive Order 10501 is not by its terms limited to the Executive Branch of the Government /3/ although certain of its provisions /4/ so imply. A memorandum dated November 5, 1953 from the President to the heads of all departments and agencies of the government applied the provisions of the Order eliminating or limiting classification authority to a number of agencies of the executive branch including some which are not wholly subject to Presidential control, such as the Federal Trade Commission and the Federal Communications Commission. An examination of Departmental files relating to the Order do not indicate the outer limits of application of the Order among government agencies. /5/

Aside from whether the Executive Order could be applied to the Commission, I am inclined to agree with you that such application might be offensive to the Commission, particularly those members from the Senate and House of Representatives. Certainly it would seem unnecessary and impolitic to make an issue of its application to the Commission, particularly in view of the fact that the Executive Order itself provides for disseminating material outside the Executive Branch.

Section 7(b) of the Order provides as follows:

10 "Dissemination Outside the Executive Branch: Classified defense information shall not be disseminated outside the executive branch except under conditions and through channels authorized by the head of the disseminating department or agency . . ."

It would appear proper to regard this special rule under section 7 as subject to the general rule contained in the first sentence of the section:

44 / ## FN2
2/ H. J. Res. 157 became P.L. 304. Changes made in the resolution prior to enactment do not require modification of the quoted opinion.

44 / 3/1 Its predecessor, E.O. 10290 of Sept. 24, 1951, specifically limited itself to the "Executive Branch." See title and second paragraph of preamble.

44 / 4/1 See, for example, section 7(b), regarding "Dissemination outside the Executive Branch" and section 5(i), "Material Furnished Persons not in the Executive Branch."

44 / 5/1 See Department of Justice files 146-41-04 and 146-41-012.

FN3
FN4
FN5

- 10 "Knowledge or possession of classified defense information shall be permitted only to persons whose official duties require such access in the interest of promoting national defense and only if they have been determined to be trustworthy."

Under section 7(b) of the Order the head of a department or agency may prescribe "conditions" for dissemination outside the Executive Branch. In this connection I note the paragraph proposed by the Personnel Security Advisory Committee to be stamped by the departments and agencies on material forwarded to the Commission. It reads as follows:

- 10 "This material is the property of the U.S. Civil Service Commission and is made available, upon request of the Chairman of the Commission on Government Security, in accordance with P.L. 304, 84th Congress and the Directive of the President of March 6, 1956. It is understood that E. O. 10501 is applicable to any classified material contained herein and suggestions appropriate to the handling of other than classified material are set forth in the transmittal letter. This material is to be returned to the U.S. Civil Service Commission when it has served the purpose for which it was loaned."

If the second sentence of the quoted paragraph were revised to reflect that compliance with Executive Order 10501 was imposed as a condition of release of the information in accordance with section 7(b) of the Order, I think that the paragraph would be unobjectionable. However, it may not be appropriate, practical or necessary to subject the Commission to all the provisions of the Order, as, for example, section 2, which limits the authority to classify.

Section 5(1) of the Executive Order, regarding "Material Furnished Persons Not in the Executive Branch of the Government" requires, whenever practicable, that the following notation be placed on the material:

- 10 "This material contains information affecting the national defense of the United States within the meaning of the espionage laws, Title 18, U.S.C., Secs. 793 and 794, the transmission or revelation of which in any manner to an unauthorized person is prohibited by law."

The March 6, 1956 directive of the President to the heads of executive departments and agencies to "give the Commission every assistance possible within the restrictions imposed by the statute" in furnishing information does not appear to constitute a modification of the provisions of Executive Order 10501 with respect to dissemination of information to the Commission.

The statutory restriction to which the President refers must be Section 8 of P. L. 304, which provides in part as follows:

10 "Sec. 8. Nothing contained in this joint resolution shall
7 be construed to require any agency of the United States to release any information possessed by it when, in the opinion of the President, the disclosure of such information . . . would jeopardize or interfere with the interests of national security."

Section 8 should be read in conjunction with section 7(b) of P.L. 304, which provides in part:

10 "The Commission is authorized to secure directly from
7 any executive department, bureau, agency, board, Commission . . . information . . . for the purposes of this joint resolution, and each such department . . . is authorized and directed to furnish such information . . . directly to the Commission. . . ."

Neither of the foregoing provisions when construed together can be regarded as a statutory direction to disregard the provisions of E. O. 10501 in furnishing information to the Commission. I think that it is safe to regard Executive Order 10501 as expressing, within the intent of Section 8 of P. L. 304, the opinion of the President that disclosure to the Commission of classified defense information other than in accordance with the provisions of Executive Order 10501 "would jeopardize or interfere with the interests of national security." Moreover, under section 8, the President may prohibit absolutely disclosure of any classified defense information to the Commission when, in his opinion, "the disclosure of such information would jeopardize or interfere with the interests of national security."

Accordingly, it is my view that sections 5(i) and 7(b) should be regarded as applicable to the furnishing of classified defense information to the Commission on Government Security.

In view of the similarity between the Commission on Government Security and the Commission on Organization of the Executive Branch of the Federal Government (Second Hoover Commission) you may find valuable the experience of the various executive departments and agencies in furnishing classified defense material to the latter. Of particular relevance would be the experience of the C.I.A. in disclosing classified data to the Task Force on Intelligence Activities of the Commission on Organization of the Executive Branch.