

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE SECRETARY OF DEFENSE
AND
THE SUBCOMMITTEE ON INTERNATIONAL OPERATIONS
OF THE SENATE COMMITTEE ON FOREIGN RELATIONS

1. This Memorandum of Understanding shall govern the protection of classified information and materials of the Department of Defense relating to the investigation by the Subcommittee on International Operations of the Senate Committee on Foreign Relations ("the Subcommittee") of the operations of foreign intelligence networks in the United States. The Department of Defense will cooperate with the Subcommittee in the Subcommittee's investigation. For such purpose, the Department of Defense, in accordance with this Memorandum of Understanding, will provide information responsive to the letter dated April 6, 1978, from Mr. Glennon to the General Counsel of the Department of Defense, and will respond to similar requests for information related to the Subcommittee's investigation. If in the opinion of the Department of Defense any such request poses security or other problems significantly different from those posed by the above referenced letter of April 6, 1978, the Department of Defense will so inform the Subcommittee and will not consider such request as covered by this Memorandum of Understanding. The Subcommittee will not request, and the Department of Defense will not make available, any information bearing directly upon sensitive intelligence sources and methods. No document or portion of a document in the possession of the Department of Defense (or any of its divisions) shall be withheld without appropriate notice to the Subcommittee of the action and, whenever possible, the reason for it. This paragraph shall not be construed as a recognition by the Subcommittee of the right of the Department of Defense to withhold any information, or as a waiver by the Department of Defense of any such right that may exist.

2. ~~The Chairman of the Subcommittee~~ has designated Mr. Michael Glennon and Mr. John Ritch of the Subcommittee staff ("the designated members of the Subcommittee staff") to ~~inspect the materials made available by the Department of Defense, or to receive oral briefings thereon.~~ The Department of Defense has accepted this designation.

3. The Department of Defense shall make available to the designated members of the Subcommittee staff materials responsive to the letter dated April 6, 1978, and (subject to paragraph 1) to subsequent written requests received from the Chairman of the Subcommittee, in a manner consistent with the obligations of the Secretary of Defense to protect sensitive intelligence sources, methods and capabilities. The materials may be presented in the form of sanitized intelligence reports, including the excision of such material as, in the judgment of the Department of Defense, might lead to disclosure of intelligence sources and methods, or in the form of oral or written summaries.

4. All documents produced in response to the Subcommittee's requests shall remain at all times in the possession, custody and control of designated personnel of the Department of Defense, including during times of inspections by the designated members of the Subcommittee staff. All oral briefings of the designated members of the Subcommittee staff shall take place at premises designated by the Department of Defense. Whenever possible, the Department of Defense will cooperate in arranging for inspections or briefings to take place in appropriate facilities of the Congress or other facilities convenient to the designated members of the Subcommittee staff.

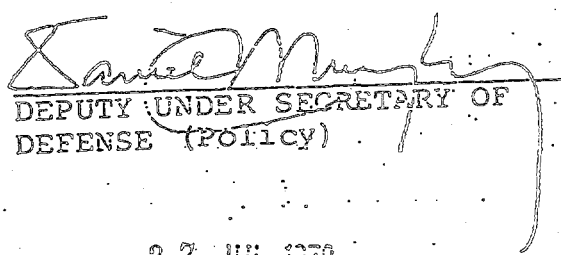
5. No copies shall be made of any document inspected. Any notes made by the designated members of the Subcommittee staff stating or summarizing the contents of any document shall be subject to review and sanitization by the Department of Defense. Such notes after review may be classified by the Department of Defense in accordance with applicable executive orders and directives thereunder, and the notes and the information contained therein shall at all times be handled accordingly. The notes, as reviewed and sanitized, may be stored in the secure facilities of the Senate Select Committee on Intelligence subject to custodial arrangements under which access to such notes shall be limited to the designated members of the Subcommittee staff and to the Department of Defense.

6. The designated members of the Subcommittee staff, in disclosing to any member of the Subcommittee information provided in accordance with this Memorandum of Understanding, shall ensure that such disclosure is made with suitable precautions for the protection of such information from further disclosure. Neither the designated members of the Subcommittee

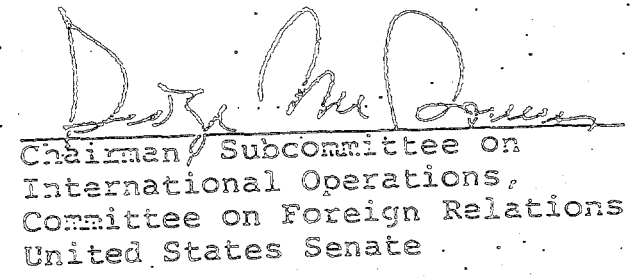
staff nor any member of the Subcommittee shall make any other disclosure of any information provided in accordance with this Memorandum of Understanding unless such information has been designated explicitly by the Department of Defense as unclassified or there has been prior review and agreement to such disclosure by the Secretary of Defense or his designee. In no event shall any disclosure of information (whether classified or unclassified) pursuant to this Memorandum of Understanding reveal that any specific information was derived from material of the Department of Defense or any component thereof. In the event that the Subcommittee determines that it wishes to make a disclosure of information provided in accordance with this Memorandum of Understanding, the Subcommittee shall give at least fourteen days' prior notice in writing to the Department of Defense (Attention: General Counsel) of its intention to release such information, and the Subcommittee shall not release such information, except as hereinafter provided, if within such fourteen days the Department of Defense files a complaint with a United States court of competent jurisdiction seeking a declaratory judgment, temporary restraining order, preliminary injunction or other appropriate relief to prevent such disclosure. It is further agreed and understood by the parties that neither the Department of Defense nor the Subcommittee shall interpose any objection to the jurisdiction of the court or the existence of a justiciable controversy and that it is the intention of both parties that the court shall finally determine whether the Subcommittee should release such disputed information contrary to the objections of the Department of Defense. It is the intent of the parties that, in such litigation, the position of the Department of Defense that such disclosure cannot be made by the Subcommittee without the approval of the Department of Defense shall not be prejudiced in any manner by the conclusion of this Memorandum of Understanding or the provision of information to the Subcommittee pursuant hereto. It is further the intent of the parties that, in such litigation, the position of the Subcommittee that such disclosure may be made without the approval of the Department of Defense shall not be prejudiced in any manner by the conclusion of this Memorandum of Understanding or the refusal to provide information to the Subcommittee pursuant hereto. In any such action, each party will be free to assert all of its constitutional, statutory, or other legal rights, and the parties hereby agree to be bound by the final outcome of any such action. If such an action is commenced by the Executive Branch but is disposed of without a judicial decision on the merits of the disclosure issue, the Subcommittee agrees that it will not on that basis, or on the basis of its fourteen day notice letter, disclose the information in dispute.

This Memorandum is, however, without prejudice to any of the Subcommittee's other rights, privileges and responsibilities concerning the production by legal compulsion and disclosure of information, and the Secretary of Defense's rights, privileges and responsibilities concerning the protection from disclosure of the information.

7. In the event of any unauthorized disclosure of information provided by the Department of Defense under this Memorandum of Understanding, the Subcommittee shall take all appropriate steps to determine the source of such disclosure and to refer the matter to the Senate Select Committee on Ethics.


DEPUTY UNDER SECRETARY OF
DEFENSE (POLICY)

DATE: 27 JUL 1978


Chairman, Subcommittee on
International Operations,
Committee on Foreign Relations,
United States Senate

DATE: 31 JUL 1978