



Information Security Oversight Office
Washington, DC 20405



Enclosure 6

December 29, 1987

Dear Mr. Stello:

A last minute rider to the Continuing Resolution for Fiscal Year 1988 (Section 630 of Public Law 100-202, copy enclosed), passed by Congress on December 21, and signed by the President on December 22, 1987, places limitations on the implementation and enforcement of the Standard Form 189, "Classified Information Nondisclosure Agreement." The Information Security Oversight Office (ISOO) will seek an Opinion of the Attorney General on the impact of this legislation on the SF 189 and the SF 189-A, "Classified Information Nondisclosure Agreement (Industrial/Commercial/Non-Government)." In the interim, and pending further instructions, please implement the following actions at once, including immediate notification to all affected subordinate activities:

1. Cease any additional implementation of existing editions of the SF 189 and SF 189-A. That is, do not have any other personnel execute the August 1983 edition of SF 189, or the June 1986 edition of SF 189-A. ISOO intends to issue as quickly as possible revised editions of each form. You will be provided further instructions as they become available.

2. Do not destroy any existing executed copies of SF 189 and SF 189-A. If at all possible, ISOO will seek to maintain their validity to the extent that they are consistent with the language of Pub. L. 100-202 and revised editions of the forms.

3. Continue the moratorium on any action against a cleared individual who has refused to execute SF 189 in the past. In all likelihood, this moratorium will be lifted when new editions of the nondisclosure agreements are available.

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PDR COMMS NRCC
CORRESPONDENCE PDR

SEC/PSOCB rec'd. 1/7/88

4. Brief cleared unsigned personnel fully on their obligations to protect classified information, and on the sanctions that may result from unauthorized disclosures.

5. Take all appropriate sanctions against personnel who disclose classified information without authority, whether they have signed a nondisclosure agreement or not. Consult with agency counsel, Justice Department counsel, or ISOO concerning the enforceability of executed nondisclosure agreements in taking such actions.

Please contact your ISOO liaison or me at FTS 535-7251 (commercial (202) 535-7251), if you have any questions.

Sincerely,

(signed) Steven Garfinkel

Steven Garfinkel
Director

Mr. Victor Stello, Jr.
Executive Director
for Operations
Nuclear Regulatory Commission
1717 H Street, NW
Washington, DC 20555

Enclosure

One Hundredth Congress of the United States of America

AT THE FIRST SESSION

begun and held at the City of Washington on Tuesday, the sixth day of January,
 one thousand nine hundred and eighty-seven

Joint Resolution

Making further continuing appropriations for the fiscal year
 1988, and for other purposes.

Resolved by the Senate and House of Representatives of the
 United States of America in Congress assembled,

EMPLOYEE DISCLOSURE AGREEMENTS

430. No funds appropriated in this resolution or any other act for fiscal year 1988 may be used to implement or enforce the agreements in Standard Forms 189 and 419 of the Government or any other nondisclosure policy, form or agreement if such policy, form or agreement:

(1) concerns information other than that specifically marked as classified; or, unmarked but known by the employee to be classified; or, unclassified but known by the employee to be in the process of a classification determination;

(2) contains the term 'classifiable';

(3) directly or indirectly obstructs, by requirement of prior written authorization, limitation of authorized disclosure, or otherwise, the right of any individual to petition or communicate with Members of Congress in a secure manner as provided by the rules and procedures of the Congress;

(4) interferes with the right of the Congress to obtain executive branch information in a secure manner as provided by the rules and procedures of the Congress;

(5) imposes any obligations or invokes any remedies inconsistent with statutory law;

Provided, that nothing in this section shall affect the enforcement of those aspects of such nondisclosure policy, form or agreement that do not fall within subsections (1)-(5)

of the section

Central Intelligence Agency



Washington, D.C. 20505

12 February 1988


MEMORANDUM FOR: See Distribution

SUBJECT: Litigation concerning the SCI Non-disclosure agreement, Form 4193.

REFERENCE: Memo to addressees from Special Security Center dated 30 December 1987 concerning Addendum to Form 4193.

1. The plaintiffs in a legal action in which the Director of Central Intelligence is a co-defendant, have filed a series of interrogatories and requests for documents (copy attached) which we are obliged to answer. In as much as the DCI's authority for SCI matters - including the use of Form 4193 - extends to the non-NFIB agencies, addressees are requested to respond to interrogatories Number 7, 9, 10, 16, 19 and 20 at their earliest convenience, and not later than 26 February 1988.

2. Any questions in this matter may be directed to the CIA's Office of General Counsel, Ms. Adrienne Davis, 482-5093. Many thanks for your cooperation.


Robert F. Moroney
Chief, Special Security
Center, Office of Security

Attachment

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

NATIONAL FEDERATION OF FEDERAL
EMPLOYEES,

Plaintiff,

v.

UNITED STATES OF AMERICA,
et al.

Defendants.

Civil Action No. 37-2284-OG

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, AFL-CIO, et al.

Plaintiffs,

v.

STEVEN GARTINER, Director,
Information Security Oversight
Office, et al.

Defendants.

Civil Action No. 87-2412-OG

PLAINTIFFS' INTERROGATORIES AND REQUEST
FOR PRODUCTION OF DOCUMENTS

Plaintiffs hereby request that defendants in the above captioned action answer under oath, in accordance with Rules 33 and 3 of the Federal Rules of Civil Procedure, the following interrogatories and request for production of documents. These interrogatories are addressed to all defendants, jointly and individually. In the event the answer to an interrogatory differs from one defendant to the other, please submit answers for each defendant, as appropriate identifying the party for which the answer is provided.

7. Since December 22, 1987, has defendant imposed any sanctions on any employee or other individual for refusing to sign SF 4193?

8. Does defendant intend to require or ask any employee or other individual to sign SF 4193 from the present through the end of the current fiscal year? (b) if so, will defendant modify the terms of the form in any way? (c) if so, describe any such modifications; and (d) produce any such written modifications or addenda.

9. Has defendant issued any instructions on compliance with the continuing resolution's ban on implementation of SF 4193 during the current fiscal year? (b) if so, describe such instructions; and (c) produce any documents containing such instructions.

10. (a) Does defendant intend to issue any instructions on compliance with the continuing resolution's ban on implementation of SF 4193 during the current fiscal year? (b) if so, describe the content of any such instructions; and (c) state specifically whether DOD plans to direct the agencies (i) to stop requiring employees sign SF 4193; (ii) to modify SF 4193 before requiring employees to sign it; and/or (iii) to rectify any prior punishment of individuals who refused to sign SF 4193.

11. (a) Since December 22, 1987, has defendant enforced any provisions of SF 189? (b) if so, state which provisions; and (c) describe the enforcement actions taken.

12. (a) Does defendant intend to enforce any provisions of SF 189 between now and the end of the current fiscal year? if so, (b) state which provisions; and (c) describe the enforcement actions.

13. (a) Has defendant issued any instructions on compliance with the continuing resolution's ban on enforcement of SF 189 during the current fiscal year? (b) If so, describe such instructions; and (c) produce any documents containing such instructions.

14. (a) Does defendant intend to issue any instructions on compliance with the continuing resolution's ban on enforcement of SF 189 during the current fiscal year? (b) if so, describe the content of any such instructions; and (c) state specifically whether ISCO plans to direct the agencies to continue enforcing any of the terms of SF 189, and if so, identify such terms.

15. (a) State how many individuals have been punished or threatened with punishment for refusing to sign or for allegedly violating the terms of SF 189; (b) identify the reason for the action and/or the provision(s) allegedly violated; (c) describe any sanctions imposed; (d) state whether defendant has taken any measures to restore such individuals to the position they were in before such punishment was imposed; and (e) if not, state whether defendant intends to take such corrective action.

16. (a) State how many individuals have been punished or threatened with punishment for refusing to sign or for allegedly violating the terms of SF 4193; (b) identify the reason for the action and/or the provision(s) allegedly violated; (c) describe any sanctions imposed; (d) state whether defendant has taken any measures to restore such individuals to the position they were in before such punishment was imposed; and (e) if not, state whether defendant intends to take such corrective action.

17. (a) Has defendant notified the individuals who have signed SF 189 of the existence and effect of the continuing resolution on their obligations; (b) if so, describe the method of notification; (c) describe the content of any such notification; and (d) produce any documents containing such notifications.

18. (a) Does defendant intend to notify the individuals who have signed SF 189 of the existence and effect of the continuing resolution on their obligations; (b) if so, describe the planned method of notification; and (c) describe the planned content of any such notification; specifically identifying the terms that defendant plans to advise the signatories will have no effect during the current fiscal year.

19. (a) Has defendant notified the individuals who have signed SF 4193 of the existence and effect of the continuing resolution on their obligations; (b) if so, describe the method of notification; and (c) describe the content of any such notification; and (d) produce any documents containing such notifications.

20. (a) Does defendant intend to notify the individuals who have signed SF 4193 of the existence and effect of the continuing resolution on their obligations; (b) if so, describe the planned method of notification; and (c) describe the planned content of any such notification; specifically identifying the terms that defendant plans to advise the signatories will have no effect during the current fiscal year.

Respectfully submitted,

H. Stephen Gordon
H. Stephen Gordon
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Bruce P. Hennen
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

NATIONAL FEDERATION OF FEDERAL
EMPLOYEES,

Plaintiff,

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Defendants.

Civil Action No. 87-2284-OG

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EMPLOYEES, AFL-CIO, et. al.,

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12. (a) Does defendant intend to enforce any provisions of SF 189 between now and the end of the current fiscal year; if so, (b) state which provisions; and (c) describe the enforcement actions the defendant plans to take.

13. (a) Has defendant issued any instructions on compliance with the continuing resolution's ban on enforcement of SF 189 during the current fiscal year? (b) if so, describe such instructions and (c) produce any documents containing such instructions.

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Respectfully submitted,

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