

PUBLIC INTEREST DECLASSIFICATION BOARD

MINUTES OF THE MEETING

October 13, 2006

(As approved at the November 13, 2006 PIDB Meeting)

The Public Interest Declassification Board (PIDB) held its seventh meeting on Friday, October 13, 2006. This meeting was held in the Archivist's Reception Room, Room 105, National Archives Building, Washington, D.C. It included a summary briefing of the declassification program at the U.S. Department of Energy (DOE), as well as a joint-panel discussion with representatives from the Department of Defense (DoD), the Department of State (State), and DOE. L. Britt Snider, Chairman of the PIDB, chaired the meeting. Other Board Members that attended included Martin C. Faga, Joan Vail Grimson, David E. Skaggs, Elizabeth Rindskopf Parker, and William O. Studeman. Also present: J. William Leonard, Director, Information Security Oversight Office (ISOO), serving as Executive Secretary for the PIDB; and William J. Bosanko, Pamela J. Carcieri, Lee Morrison, and Dallas L. Perry, ISOO, serving as the PIDB staff.

I. Pre-Brief – Executive Session (Closed)

After welcoming the Board, the Chair then asked Mr. Leonard to introduce personnel from the General Services Administration (GSA), Ms. Cassandra Browner and Ms. Bernadette Wiggins. Ms. Browner provided the Board with more information concerning federal annuitants receiving compensation for work performed on the behalf of the PIDB. She continued by explaining that some Boards build a waiver directly into their legislation and provided several examples. The Chair asked Ms. Browner to make further inquiries on how the PIDB could obtain that type of waiver as well. Ms. Browner stated that she would follow-up and would let the Board know the answer.

The Chair then turned to Mr. Bosanko to provide an overview on DOE's roles and responsibilities concerning the classification and declassification of National Security Information (NSI). Mr. Bosanko began by explaining the juxtaposition that Restricted Data (RD) and Formerly Restricted Data (FRD) were classified pursuant to the Atomic Energy Act and that that type of information was not managed under Executive Order 12958, "Classified National Security Information," as amended, (the Order). The Chair clarified that the Board is not limited to reviewing information classified by the Order and as such, its responsibilities extend to other classified information to include RD and FRD.

Mr. Bosanko indicated that DOE continues to meet its requirements under E.O. 12958, as amended with respect to declassification. The ongoing challenges relate instead to the interaction and intersection of information identified as RD and FRD under the Atomic Energy Act and information determined to be classified national security information under E.O. 12958, as amended. In this area, there are two principle concerns: the impact of reviews conducted pursuant to "Kyl-Lott" and former nuclear weapons storage locations identified in historical documents.

Mr. Bosanko then provided the Board information concerning the Kyl/Lott Amendments. Specifically, in 1996, Congress passed P.L. 104-106, which required page-by-page review of DOE documents subject to automatic declassification under E.O. 12958, as amended. Subsequently, Congress passed section 3161 of the National Defense Authorization Act for FY 1999 (P.L. 105-261), known as the “Kyl Amendment.” Under this provision, DOE was required to prepare a plan to prevent the inadvertent release of RD and FRD in the records of other agencies. This plan is known as the “Special Historical Records Review Plan.” The Plan requires agencies to review their records on a page-by-page basis by reviewers trained by DOE unless the records are highly unlikely to contain RD and FRD. Both of these mandates focused on improving the quality of reviews of records not yet released to the public. However, what is now referred to as the “Lott Amendment” was put in place by section 3149 of P.L. 106-65. The Lott Amendment applied the requirements of the Kyl Amendment to records that had already been released to the public.

The Kyl Amendment requires the Secretary of Energy to submit a report to the Senate and House Committees on Armed Services and the Assistant to the President for National Security Affairs on the inadvertent releases of RD and FRD under the automatic declassification provisions of E.O. 12958, as amended. To date, DOE has issued 22 such reports. The reports highlight that 205,253,780 pages have been reviewed or sampled. Of these, 2,759 pages have been identified as containing RD information and 4,657 have been identified as containing FRD information. This has resulted in the withdrawal of 2,882 documents containing 91,344 pages overall. Based upon these numbers, only .0000361% of the pages examined were found to contain classified information. Of these, two thirds were FRD, the majority of which were never marked as FRD in the first place. Much of this information relates to nuclear weapons storage locations from decades ago – weapons depots that have long ceased to be operational. While most of these locations are widely known, and some have, in fact, been declassified, there are no immediate prospects for the remaining information to be declassified. In addition to the above, withdrawal of the classified pages also resulted in the withdrawal of 12 times as many unclassified pages.

The Chair inquired as to how much interest in this type of information there was from the public perspective. Mr. Bosanko replied that there is much interest, especially from the historical community. He concluded by noting that DOE was not represented on the Interagency Security Classification Appeals Panel (ISCAP) and that in general, the current policy with respect to FRD is broad and allows different interpretations.

II. Board Meeting – Opening Comments (Open)

The Chair began the meeting by stating that the Board continues to educate themselves on the business processes of the government agencies with the largest declassification programs. He then provided an update about the events that had transpired since the Board’s last meeting on September 9, 2006. Mr. Snider continued by stating that the Board had received a request from the Senate Select Committee on Intelligence (SSCI) dated September 19, 2006, to review portions of two of the Committee’s recent reports that had been redacted by the Executive branch for reasons of classification. The committee has asked that the Board assess whether more information could be declassified and released. The Chair reminded the Board that the PIDB charter authorizes the Board to undertake such reviews but only if requested to do so by the President. The Chair noted that a formal letter had been sent to the White House requesting

guidance and that interim replies had been sent to each of the Senators that had signed the letter to the PIDB. He stated that the Board had not yet received a response from the White House.

The Chair then stated that he represented the Board on September 25, 2006 on a panel discussion sponsored by the American Society of Access Professionals (ASAP), whose members specialize in the Freedom of Information and Privacy Acts. He provided information on the PIDB to those in attendance at the ASAP by way of his participation and encouraged them to participate in the Board's ongoing process.

The Chair then provided an overview of the trip he took with the Executive Secretary to visit the Ronald Reagan Presidential Library in Simi Valley, California. He stated that he was convinced that the presidential library system is something that the Board should devote more time to and encouraged each of the members to visit one of the libraries.

The Chair concluded by stating that Richard Norton Smith, who had been serving as the PIDB's Vice Chairman, and who had made a significant contribution in his short tenure, had decided not to ask that his term on the Board be extended. The Chair stated that he was very sorry to lose Mr. Smith, a wonderful person with enormous insight, but hoped that a capable replacement could be soon found. He then introduced the guest presenters from the Department of Energy, Dr. Andrew Weston-Dawkes, Deputy Director, Office of Classification, and Mr. James A. Wendt, Director, Office of Document Reviews.

III. Summary Briefing on the Department of Energy (Open)

Dr. Weston-Dawkes began his presentation (enclosure) by explaining that DOE is more integrated than some Agencies and that such an approach helps DOE maintain more control and consistency in its classification decisions. He continued by describing the Office of Classification's mission and organizational structure. Dr. Weston-Dawkes explained that DOE has an active training program and makes every effort to explain the principles behind the classification guidance. He then provided examples of the classification training requirements for Classification Managers, Classification/Declassification Authorities, and Derivative Declassifiers. Particularly important to the success of DOE's program, he mentioned, is a comprehensive Quality Assurance Review Program. Dr. Weston-Dawkes then turned over the presentation to Mr. Jim Wendt. He reiterated that the Order does not apply to RD/FRD or Uncontrolled Nuclear Information (UCNI). Mr. Skaggs asked for an example of UCNI and Mr. Wendt stated that one example would be the integral operating plans of a nuclear plant. A discussion ensued on For Official Use Only and Sensitive but Unclassified categories of information. Mr. Wendt provided a graphic representation of a recent internal audit and the documents that were reviewed and withdrawn. Mr. Wendt concluded by describing the various reporting requirements and the reports that his agency is responsible for preparing.

A question and answer session followed the DOE presentations. The Chair asked for clarification about the public interest and Dr. Weston-Dawkes said that there was much interest in the military equation as it relates to current events. Mr. Wendt added that information about weapons design or capabilities was also routinely sought by requesters. The Chair asked for an example of a current event that would generate interest. Dr. Weston-Dawkes said that it could be related to health concerns surrounding a closure of a DOE location. Ms. Grimson asked if a risk benefit analysis had been conducted on the documents that were removed under the Kyl/Lott

provisions. Dr. Weston-Dawkes said that a quantitative study had not been conducted but that some of the RD that was removed was in fact extremely sensitive. Ms. Grimson expressed a desire that members of the Board be provided examples of the types of sensitive information that has been removed.

The Chair thanked both gentlemen for their comprehensive presentations.

IV. Open Forum (Open)

The Chair provided the opportunity for any members of the public to come forward and address the Board. No one came forward.

V. Executive Session – Joint-Panel Discussion (Closed)

Mr. Leonard then introduced the panel which consisted of Mr. Greg Torres, DoD, Dr. John G. Dardis, State, Dr. Andrew Weston-Dawkes, DOE, and Mr. James Wendt, DOE. Mr. Leonard began by describing the shared responsibilities of DoD and DOE with respect to Formerly Restricted Data (FRD) as well as its potential impact on foreign relations and thus the interest of the Department of State. Mr. Leonard said that DOE often defers to DoD on military tactical information regarding the control, use, and storage of nuclear weapons.

Issues discussed included the origin of the “neither confirm nor deny policy” with respect to the past location of nuclear weapons overseas; ultimate responsible for keeping this policy current; the circumstances under which past storage location of weapons sites are acknowledged; the impact that arms limitation treaties and other historical events have had on this policy; the impact of when foreign governments have released their own documents or U.S. information or documents related to this issue; and, the impact this policy has had upon historical records in general such as deck logs of ships that had nuclear weapons in their inventory.

Admiral Studeman asked how the panel tracked who has interest in that type of information. Dr. Dardis replied that they are in constant dialog with the Historical Advisory Committee and the Historians who publish the Foreign Relations of the United States series, as well as the personnel from the National Security Archive.

Mr. Torres stated that he would take back the questions of the Board, ascertain the background as to why the DoD decisions are what they are and share the results of his additional follow-up with the Board.

The Chair thanked the panel for their attendance and participation.

VI. Executive Session – Working Lunch (Closed)

This portion of the session began with further discussion on the request from the SSCI and the best approach on how to proceed. There was also some discussion on how to actually process the documents once they are received by the Board. The Chair stressed that the Board lacked actual declassification authority and reiterated that the Board’s purpose in this area was to instead make recommendations.

The conversation then moved to the PIDB schedule for the remainder of the year. Mr. Leonard stated that the Board would hear from the Federal Bureau of Investigation in November. The Board requested an update on the National Declassification Initiative and the declassification of 9/11 Commission records from the National Archives and Records Administration (NARA). Mr. Leonard informed the Board on the difficulties of arranging a December meeting location due to other NARA commitments and said that the location would also have to be accessible to members of the public. The Chair asked that all members bring their calendars to the next meeting to discuss options. The Chair then asked for a nomination of a new Vice Chairman since that position was recently vacated by Mr. Smith. Ms. Grimson and Dean Parker made a motion for former Congressman David E. Skaggs to serve as Vice Chairman. All were in favor. The meeting concluded with approval of the minutes from the September 9, 2006 meeting.

VII. Adjournment

The Chair adjourned the meeting.