

PUBLIC INTEREST DECLASSIFICATION BOARD

MINUTES OF THE MEETING

November 13, 2006

(As approved at the December 15, 2006 PIDB Meeting)

The Public Interest Declassification Board (PIDB) held its eighth meeting on Monday, November 13, 2006. This meeting was held in the George Washington Room, Room 121, National Archives Building in Washington, D.C. and included updates on the National Declassification Initiative (NDI), the records of the 9/11 Commission, as well as a summary briefing of the declassification program at the Federal Bureau of Investigation (FBI).

L. Britt Snider, Chairman of the PIDB, chaired the meeting. Other Board Members that attended included Martin C. Faga, Joan Vail Grimson, Elizabeth Rindskopf Parker, and David E. Skaggs. Also present: J. William Leonard, Director, Information Security Oversight Office (ISOO), serving as Executive Secretary for the PIDB; and William J. Bosanko and Pamela J. Carcieri, ISOO, serving as the PIDB staff.

I. Pre-Brief – Executive Session (Closed)

After welcoming the Board, the Chair then asked Mr. Bosanko to provide an overview on the declassification program of the FBI. Mr. Bosanko began by stating that there was little declassification activity at the FBI between 1995, when Executive Order 12958, “Classified National Security Information,” as amended, (the Order) was enacted, and 2005. Mr. Bosanko said that this was in large measure due to a Memorandum of Understanding (MOU) (enclosure 1) between ISOO and the FBI that was in effect from July of 1995 until recently. The MOU agreed that the FBI’s Central Records System and Electronic Surveillance Indices were exempt from the automatic declassification provisions of the Order. The rationale for the agreement was that the Privacy Act of 1974 would substantially preclude the release of declassified information contained in these two systems, that there is a relatively small proportion of classified information contained throughout the FBI’s voluminous records, that it would be impractical to review all such records within the time period that was originally specified by the Order, and that substantial harm to the national security could result from the automatic declassification of certain information contained in the systems.

As a result of a series of meetings between ISOO and the FBI during 2005 and into 2006, ISOO and the FBI have agreed that the MOU was without standing and is now null and void, without force and effect. Subsequently, there has been significant change to the declassification program at the FBI. Mr. Bosanko continued by describing the changes that have taken place. The first is the planned automatic declassification of over 270 million pages of material. This material falls into two categories; file classifications that are unlikely to contain classified information but would have been reviewed for declassification under past FBI review practices, and two file classifications that contain 25 year old classified information that the FBI will not review by the end of the year. The FBI will seek to review these records when an access request (i.e., Freedom of Information Act (FOIA) or Mandatory Declassification Review (MDR)) is made or before the records are transferred to the National Archives and Records Administration (NARA) in order to ensure that the records do not contain any previously unidentified classified information eligible

for exemption from automatic declassification. The second change Mr. Bosanko emphasized was that ISOO was working closely with the FBI on creating a declassification guide. And finally, Mr. Bosanko stated, that the FBI had a process in place to thoroughly and systematically identify those files that are appropriate for file series exemptions under section 3.3(c) of E.O. 12958, as amended. Mr. Bosanko continued by saying that while the exemptions will cover more than 50 million pages, the request for the exemptions was rigorous and that Mr. Steve Carlotto from the FBI's Counterintelligence Division should be commended for his excellent work.

II. Board Meeting – Opening Comments (Open)

The Chair began by welcoming all those in attendance and then provided an overview of the agenda. The Chair then noted that the Board is still waiting for clearance from the White House for the Board to act upon the request from the Senate Select Committee on Intelligence (SSCI). He continued by stating that the Board would hold one more meeting in December, and then in January, the Board will be hearing from members of the Public. He encouraged maximum participation and attendance. The Chair then introduced the first guest speaker, Dr. Michael J. Kurtz, Assistant Archivist of the U.S. for Record Services.

III. Updates on the NDI and the 9/11 Commission Records (Open)

Dr. Kurtz began his presentation by providing an update on the NDI. He stated that an Executive Steering Group had been formed and that it had developed a concept of operations for the NDI. Dr. Kurtz continued by describing the workload at NARA, which he stated is 160,000 cubic feet of records located at Archives II, College Park, MD. He said that all of these records had been through the initial review process at their agencies, and it was now NARA's job to refer those records to the applicable federal agencies for a review of the agency's equities and otherwise process the records for release. Dr. Kurtz then explained the quality assurance business process. He stated that this will be accomplished through sampling, so that NARA's limited resources can best be utilized. Mr. Leonard clarified that the sampling will, by its very nature, encounter many different degrees of difficulty and review requirements. Dr. Kurtz concurred and added that it will also involve NARA personnel exchanging information with the agency whose records were subject to the sampling. Dr. Kurtz concluded this update by stating he was the Chair of the NDI Executive Steering Group and would like to return to provide quarterly updates to the PIDB. The Chair asked about prioritization of the records. Dr. Kurtz explained that NARA would be looking at heavily used and requested records as well as key agencies so that those records with the most interest would be processed and released to the public first.

Dr. Kurtz then provided an update on the records of the 9/11 Commission. He began by stating that the Chair and Vice Chair of the Commission had asked the National Archives to lead a review on the 600 cubic feet of records so that the materials would be ready for release by January 2, 2009. Dr. Kurtz explained that 120 cubic feet of records were considered unclassified, but that because these records contained a variety of complexities, a careful line-by-line review was necessary. Dr. Kurtz then explained that NARA would like to establish an interagency working group to process the classified records of the Commission. He said that there are seven major agencies with equities in the records and that he would like to see a collaborative venture to process them. Dr. Kurtz concluded by reiterating that a work plan was in place to complete the review by 2009.

The Chair thanked Dr. Kurtz for his update and then introduced the next presenter, Mr. David M. Hardy, Chief, Records/Information Dissemination Section, FBI.

IV. Summary Briefing on the FBI Declassification Program (Open)

Mr. Hardy, began his presentation (enclosure 2) by stating that the FBI is taking a pragmatic approach to the automatic declassification of its records. Mr. Hardy then provided the Board with the background to the FBI's current business processes. He stated that FBI file classifications are identified with a type of investigation and that the FBI does not use an archival system, which presents a problem for retrieving information for FOIA requests, etc. Mr. Hardy continued by saying that the FBI does not make public the names of the file classifications that are associated with the National Foreign Intelligence Program. He then reiterated the history of the 1995 MOU between ISOO and the FBI and stated that it was determined in 2005 that the MOU was no longer valid. That meant that the FBI faced a tremendous amount of records subject to automatic declassification by December 31, 2006, so the FBI developed a three-pronged approach for addressing the processing needs of the records. By using sections 3.3(a), 3.3(b), and 3.3(c) of the Order, the FBI began to make determinations for their records. Mr. Hardy explained the methodology that was used for identifying file classifications covered by the file series exemption being sought by the FBI, the proposed declassification dates, and the volume of records in the file series. Mr. Hardy said that the FBI believes there is a low percentage of national security information contained in the remaining file classifications over 25 years old and that the FBI would not conduct a systematic review of this information but rather they are planning to automatically declassify the information, amounting to some 270 million pages. Mr. Leonard emphasized that the risk management approach the FBI was taking with this information was what the Order originally intended. Mr. Hardy continued by describing two problematic files classifications within the FBI, which are: Series #66, General Administrative Matters, and Series #67e, Special Agent Personnel Records. Mr. Hardy said that while these two file classifications contain a low volume of classified information, they did have the potential for containing some highly sensitive information. Therefore, the FBI will conduct a systematic review of the information contained within those two particular file classifications. Mr. Hardy then spoke about the annual program requirements and the challenges the FBI faces with referrals and special media records. Mr. Hardy said that beyond 2007, the use of technology is critical to complete the required reviews.

The Chair asked Mr. Hardy about the Historical Document Review Team and whether a team of that nature allowed greater public access to the information. Mr. Hardy responded by saying he would try to ascertain why there was no longer a Historical Review Board. Mr. Leonard said that the public would continue to be able to use the FOIA and MDR process for access to information not yet subject to automatic declassification. Mr. Hardy concluded his presentation by thanking ISOO, and in particular Mr. Robert Skwirot and Mr. William Bosanko, who have recently guided the FBI through the declassification process.

The Chair thanked Mr. Hardy for his informative presentation.

V. Open Forum (Open)

The Chair then provided the opportunity for any member of the public to come forward and address the Board. Mr. Jim David came forward and sought clarification of the estimates provided on the amount of FBI records in a July 1998 Washington Post article and the 2003 ISOO Annual Report. Mr. Hardy responded by saying that he was confident in the information he provided.

VI. Executive Session – Working Lunch (Closed)

This portion of the session began with further discussion on the request from SSCI to review portions of two of the Committee's recent reports that had been redacted by the Executive branch for reasons of classification. Mr. Leonard stated that he had been in touch with the White House Counsel and that the White House has passed the issue to the National Security Council (NSC) for review and decision. The Chair stated that he had alerted pertinent staff from the Office of the Director of National Intelligence (DNI) and that they are prepared and willing to respond to the SSCI request. There was much discussion on the jurisdiction of the Board and on the appropriate courses of action. The Chair stated that he felt that the independent and unbiased nature of the Board is undermined if the Board has to receive permission to review material. Therefore the Chair proposed a change in the statutory language. All were in favor. There was then some discussion on the best way to proceed in reviewing the reports. The Chair then proposed that an initial triage effort, with a small portion of Board personnel reviewing the documents and seeking a briefing from the DNI.

The Board then discussed meeting dates through March and proposed guest speakers from the media, retirees, researchers, and the public interest groups. The meeting concluded with the approval of the minutes from the October 13, 2006 meeting.

VII. Adjournment

The Chair adjourned the meeting.