



DF. 2014 - 00242

FAA 1871(c) Redaction Overview



Office of General Counsel
March 17, 2010

(b)(3)

Classified By: [REDACTED]
Reason: 1.4(c)
Declassify On: 20350316
Derived From: ODNI COL T-08

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50 U.S.C. 1871(c) - FISA Section 601 (as amended by FAA)

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...
(c) SUBMISSIONS TO CONGRESS.-- The Attorney General shall submit to the committees of Congress referred to in subsection (a)--

(1) a copy of any decision, order, or opinion issued by the Foreign Intelligence Surveillance Court or the Foreign Intelligence Surveillance Court of Review that includes significant construction or interpretation of any provision of this Act, and any pleadings, applications, or memoranda of law associated with such decision, order, or opinion, not later than 45 days after such decision, order, or opinion is issued; and

ONGOING PRODUCTION

(2) a copy of each such decision, order, or opinion, and any pleadings, applications, or memoranda of law associated with such decision, order, or opinion, that was issued during the 5-year period ending on the date of the enactment of the FISA Amendments Act of 2008 and not previously submitted in a report under subsection (a).

5-YEAR PRODUCTION (now complete)

(d) PROTECTION OF NATIONAL SECURITY.-- The Attorney General, in consultation with the Director of National Intelligence, may authorize redactions of materials described in subsection (c) that are provided to the committees of Congress referred to in subsection (a), if such redactions are necessary to protect the national security of the United States and are limited to sensitive sources and methods information or the identities of targets.

AG/DNI ROLE (redact sources & methods info and non-senior staff names)

(e) DEFINITIONS.-- In this section:

(1) FOREIGN INTELLIGENCE SURVEILLANCE COURT.-- The term 'Foreign Intelligence Surveillance Court' means the court established under section 103(a).

(2) FOREIGN INTELLIGENCE SURVEILLANCE COURT OF REVIEW.-- The term 'Foreign Intelligence Surveillance Court of Review' means the court established under section 103(b).

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Summary of 1871(c) redaction process

Documents are still considered classified when produced to the HPSCI, SSCL, SJC, and HJC- but sources and methods (as well as non-senior staff names) are redacted pursuant to the

1871(c) process

- DOJ/NSD
 - Identifies "significant" decisions, orders, and opinions
 - Makes initial gray/black-line redactions for agency reviewers
- ODNI
 - Tasks out documents for appropriate IC agency reviewers (generally CIA, FBI, and/or NSA)
 - Reviews documents; responds to agency reviewers with additional questions if necessary
 - Submits comments and/or questions related to additional redactions, or existing redactions that aren't needed, for DOJ/NSD
- DOJ/NSD
 - Makes final black-line redactions
 - Follows security-approved process for producing documents in hard-copy or electronically for production to the four committees
 - Documents go through DOJ internal process (OLA, front office, etc)

Objective: to meet 45-day turnaround set in statute

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AG/DNI 1871(c) process objectives

- (1) Ensure that decisions, orders, and opinions containing “significant” interpretations of FISA are accurately identified for production (along with associated filings)
- (2) Make *accurate* sources and methods (and non-senior staff name) redactions- take precautions to protect intelligence sources and methods
- (3) Avoid excess redactions that aren’t necessary to protect sources and methods
- (4) Meet 45-day deadlines set in statute

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Importance of redactions: Protection of collection methods and sources

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- Some sources and methods used since WW2 are still classified and still used today
- Many sources and methods from the 45-day FISC/FISCR productions are very current
 - Collection methods that may be lost if disclosed
 - People who are sources or targets of surveillance
 - Foreign liaison relationships that are classified
- Importance of dissemination controls, protections
- Members of Congress have to speak publicly and communicate with the public (C-SPAN, etc).
 - Very difficult position to have to differentiate between sensitive sources and methods (collection methods- people- liaison relationships) during public legislative debates and behind-the-scenes correspondence
 - If known, information may be inadvertently disclosed
 - If sources and methods are disclosed, collection methods may be lost, or sources jeopardized; foreign liaison less willing to provide info



Need proper procedures for safeguarding sources and methods- that is the purpose of the 1871(c) redaction process.

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Importance of redactions: Non-senior staff names

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- Non-senior staff can

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- Some agencies have statutory authority to protect non-senior staff names (eg, CIA)
- Disclosure of non-senior staff names could present threats to those employees when traveling overseas, including CI threats



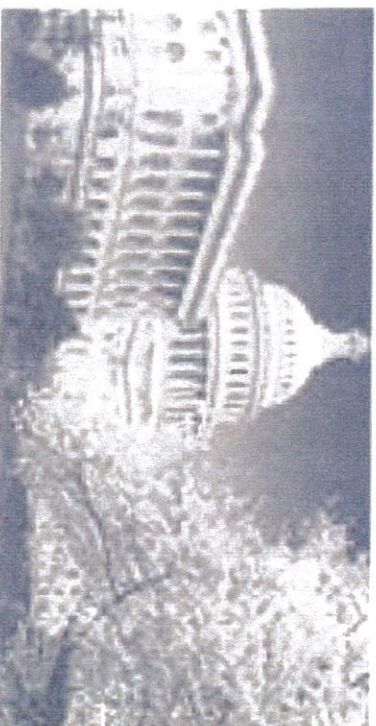
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Congress' access to classified information

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- Members of Congress, as constitutionally elected officers, are presumed trustworthy, so no specific security clearances are necessary for Senators or Representatives to receive access to classified information
 - Access to classified information is based on Congress' constitutional role to make law, appropriate funds, conduct oversight, and confirm agency officials
 - Speech & debate; declassification
 - House requires secrecy oaths for members- Senate does not
- Congressional staff must have security clearances to access classified information



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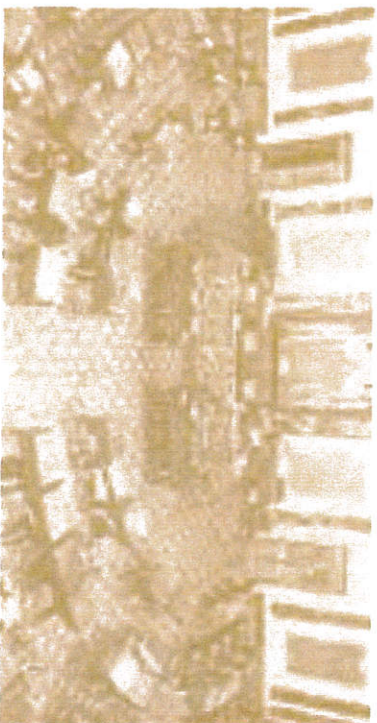


Congressional Committees: information security procedures

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Various information and personnel security rules/procedures (eg, SCIFs, security officers, procedures for reproducing materials, etc.)

- Senate: Office of Senate Security; Senate Security Manual
 - See also, committee procedures such as the SSCIR's S. Res. 400, Rule 9, "Procedures for Handling Classified or Committee Sensitive Material"
- House: Individual House committees and Member office requirements for information and personnel security



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Executive Branch obligation to protect classified information

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- Executive Order 13526, Classified National Security Information (“the new 12958”), Part 4- Safeguarding, includes a number of executive branch obligations:
 - 4.1(e)- persons authorized to disseminate classified information outside the executive branch shall ensure the protection of the information in a manner equivalent to that provided within the executive branch
 - 4.1(g)- ensure protections for classified information being transmitted elsewhere
 - 4.1(h)- safeguard foreign government information, liaison information, under standards providing a degree of protection at least equivalent to that required by the government that furnished the information
- Etc.



The AG and DNI are responsible for upholding these obligations.



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Types of sources and methods information that do NOT need to be redacted?

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Types of sources and methods information that do not need to be redacted for classified disclosure to the Intel and Judiciary committees through the 1871(c) process

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(b)(3)



[REDACTED]

- BUT still need to redact specific targets

(b)(1)
(b)(3)



[REDACTED]

- BUT still need to redact specific targets

- Techniques already widely covered in Intel and Judiciary committees (some issues covered during the 5-year production fell into this category)

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Summary of AG/DNI objectives

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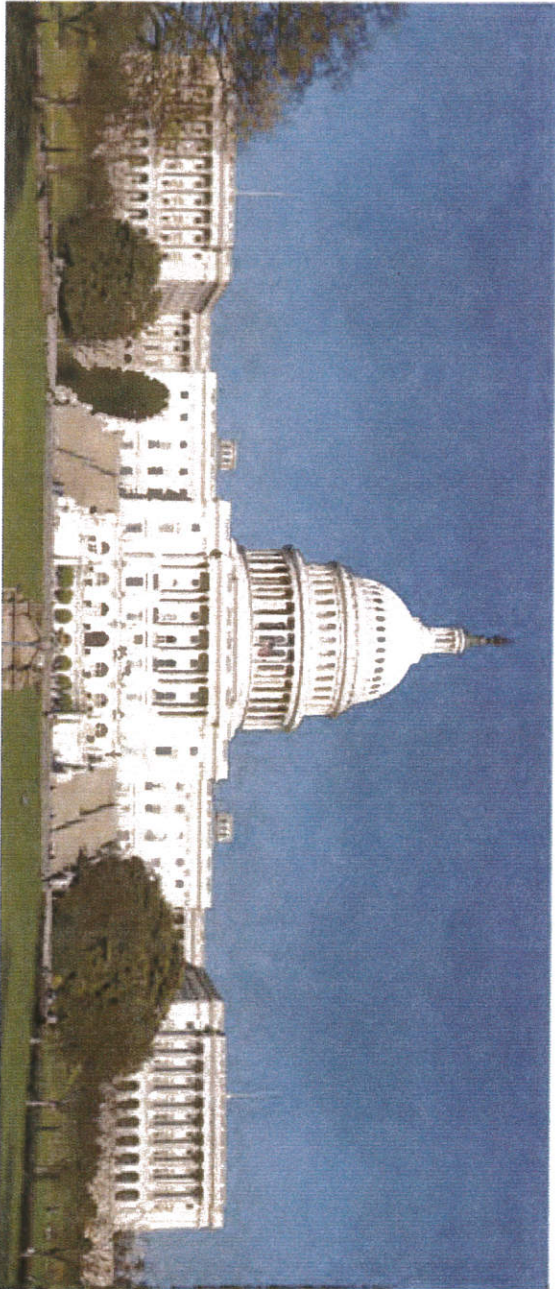
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How to improve the process?

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- Issues to discuss?
- Possible process improvements?
- Status of declassification initiative?



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