

## Public Interest Declassification Board

# COPY

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### EXECUTIVE SECRETARY

J. William Leonard

January 19, 2007

The Honorable Joseph I. Lieberman  
Chairman, Committee on Homeland Security  
and Governmental Affairs  
United States Senate  
601 Hart Senate Office Building  
Washington, DC 20510

Dear Senator Lieberman:

This letter serves as the first required annual report under the provisions of section 706(e) of the Public Interest Declassification Act of 2000, as amended (P.L. 106-567) (the Act) on the activities of the Public Interest Declassification Board (PIDB) and covers our activities during calendar year 2006. This year represented the first opportunity for the Board to begin its efforts in earnest after issues concerning appointment of a quorum and funding were resolved.

In addition to issuing to the Congress an annual report on its activities, the Board is also required to review for declassification certain records that have been the subject of a specific congressional request (section 704(e), the Act) as well as make recommendations to the President regarding proposed initiatives to identify, collect, and review for declassification classified records and materials of extraordinary public interest (section 704(c), the Act). In addition, at its discretion, the Board receives briefings on agency declassification efforts (section 704(a), the Act) and makes recommendations on agency declassification programs (section 704(b), the Act).

### **Summary of 2006 Activities**

#### Review of Records at the Specific Request of Congress

On November 1, 2006, the Board received its first request from a committee of jurisdiction (the Senate Select Committee on Intelligence, hereinafter "SSCI") to review portions of two committee reports which the Executive branch had previously declined to declassify and release to the public.

In attempting to respond to the Committee's request, the Board has encountered differing interpretations of two separate but related provisions of its enabling legislation. Section 703(b)(5) provides that one of the purposes of the Board is "[t]o review and make recommendations to the President in a timely manner with respect to any congressional request, made by the committee of jurisdiction, to declassify certain records or to reconsider a declination

to declassify specific records." Section 704(e), setting forth the functions of the Board, provides: "*If requested by the President*, the Board shall review in a timely manner certain records or declinations to declassify specific records, the declassification of which has been the subject of specific congressional request described in section 703(b)(5)" (emphasis added). The first provision anticipates timely independent Board action on a congressional request, while the second can be read to condition such action on a Presidential request.

In addition, section 706(f) states: "In response to a specific congressional request for declassification review described in section 703(b)(5), the Board shall advise the originators of the request in a timely manner whether *the Board intends* to conduct such review (emphasis added). This passage implies that a response to a congressional request under section 703(b)(5) is a matter for the Board to determine, without regard to a Presidential request under section 704(e).

The members of the SSCI who made the request take the position that a request from the President is not required in order for the Board to carry out its review. White House staff interprets the same provisions as requiring such a request before the Board may carry out its review. As a result of these differing interpretations, the Board has been unable to best serve both the President and the Congress in a timely manner.

However the conflicting statutory provisions might be interpreted, the Board believes that having a request from the President as a prerequisite to Board action on a request from a committee of jurisdiction is unworkable, unnecessary, and deleterious to the Board's standing as an independent advocate of the public interest.

It is unworkable because the question of whether the Board should undertake a review in response to a request from a congressional committee should not rise to the level of a Presidential decision. Indeed, precisely because it should not do so, the Board has been unable to obtain a prompt decision from the White House on the review it seeks to conduct in response to the request of the SSCI.

It is unnecessary because the President retains complete control over the classification of the information at issue. The Board can only recommend to the President (or pertinent agency head) what it believes should be done. In the Board's view, action by the President should occur with respect to the Board's recommendations, not with respect to whether the Board may undertake the review to begin with -- a function specifically provided for by the statute.

Finally, the Board believes that its standing as an independent, non-partisan advocate of the public interest in declassification matters is compromised by a requirement that the President has to authorize it to undertake a classification review requested by a congressional committee. If a President chose to ignore or disapprove such a request for whatever reason, the Board could be perceived as subordinate to an Executive branch political decision, rather than as an independent advocate of the public interest. Congress deliberately made this Board a political and institutional "hybrid." Five of our members are appointed by the President, and four by the congressional leadership. It was intended, we believe, that the board should serve the interests of both branches (as well as the public) in an independent and non-partisan fashion. On December 2, 2006, we wrote the appropriate congressional committees requesting action to strike the phrase "If requested by the President" from section 704(e) of the Board's statutory charter (PL 106-567, as amended) at the earliest opportunity.

## Recommendations Regarding Proposed Declassification Initiatives

Due to a lack of new substantive proposed initiatives to identify, collect, and review for declassification any specific records, the Board has not made any recommendations to the President in this area. However, the Board has lent its support to a proposed declassification initiative relating to materials of extraordinary public interest. Specifically, the Board has sponsored a demonstration project using new and innovative ways of declassification in support of the National Archives and Records Administration's plans to fulfill the terms of its transfer agreement with the National Commission on Terrorist Attacks Upon the United States (the "9-11 Commission") to process, declassify and make available to the public as many Commission records as possible by January 2009.

Focusing on the records of the 9-11 Commission, this project will develop and evaluate new and effective declassification processes and tools as well as promote reliable historical analysis and new avenues of historical study in national security matters by making fairly recent records, some of which were at a previously high classification level, available for public review much sooner than provided by current processes and procedures. NARA will investigate the use of a new generation of technically advanced, relatively inexpensive tools, such as X1 Search or Google Search, which are geared toward indexing "local" content (i.e. not things on the Internet) for later efficient search and discovery. In addition, NARA will establish an Interagency Review Group that will use the demonstration project for the declassification of 9-11 Commission records to develop a set of what NARA describes as "best practices in using automated tools in the review of electronic records."

## Agency Briefings on Declassification Efforts

The Board received summary briefings on the status of the declassification programs of the following:

Central Intelligence Agency (CIA)

Department of Defense

Office of the Secretary of Defense

Joint Chiefs of Staff

Department of the Air Force

Department of the Army

Department of the Navy

Defense Intelligence Agency (DIA)

National Security Agency (NSA)

National Geospatial Intelligence Agency

National Reconnaissance Office (NRO)

Department of Energy

Department of Justice

Federal Bureau of Investigation

Department of State

National Archives and Records Administration (NARA)

As part of these meetings, the Board sought to hear not only the views of those with declassification responsibilities, but sought input from other quarters as well. For example, the

Board heard from historians with the Department of State, the Office of the Director of National Intelligence, DIA, NRO, and the NSA. It also heard from a representative of the CIA's Historical Review Panel and the State Department Historical Advisory Committee, and the General Editor of the Foreign Relations of the United States. Additionally, based on concerns raised by the public and government personnel, the Board heard from a panel of representatives from the Departments of Defense, Energy, and State regarding issues related to the identification of former overseas storage locations of nuclear weapons in records of permanent historical value.

In addition to the above, Board members met with the heads of the Presidential Libraries, visited the Ronald Reagan Presidential Library, participated in a session hosted by the American Society of Access Professionals, and visited the CIA and the National Archives at College Park, Maryland in order to perform on-site overviews. Also, in response to serious concerns related to potential reclassification actions at NARA, the Board heard from representatives of the following public interest groups: the National Security Archive at George Washington University; the Public Citizen Litigation Group; and the National Coalition for History.

#### Recommendations Regarding Agency Declassification Programs

During its initial year, the Board has principally sought to inform itself with respect to the declassification programs of the Executive branch, and build at the same time a record upon which recommendations for improvements in those programs might be based. During the forthcoming year, we expect to be in a position to make such recommendations, after additional contributions not only from government agencies, but from the public as well.

In addition, in order to ensure a comprehensive approach to making records of extraordinary public interest that do not undermine the national security interests of the United States available to Congress, policymakers in the executive branch, and the public, the Board plans to better understand in the coming year the procedures and policy whereby key Congressional committee records become declassified. In this regard, the Board will be looking for assistance from the Clerk of the House and the Secretary of the Senate.


#### **Continuing Impediments**

The Board continues to experience problems with vacancies on the Board. One of the appointing officials named under our charter, i.e. the current Senate Majority Leader, has yet to appoint a member to the Board. We have also had difficulty with both the White House and the Congressional leadership in filing vacancies, or extending the terms of members whose terms are expiring, in a timely manner. This puts us at a significant disadvantage as we seek to discharge our responsibilities.

The Board also continues to experience problems with its funding. Although section 708 of our charter seems to contemplate a separate line item for the Board in the President's annual budget, at present, our funding is woven into the appropriation for NARA, which itself is under tremendous pressure to meet its obligations with respect to declassification. In particular, the Information Security Oversight Office at NARA, which provides administrative support to the Board, is being heavily impacted by the demands of the Board. In the view of the Board, its funding should be provided in a separate line item, not part of the NARA appropriation.

Finally, it is not too early, the Board believes, to note that under the current sunset provision, the Board will go out of existence in December, 2008, unless Congress acts to extend it. We respectfully request that this be done for at least another four years. We have only begun to tackle this complex subject, and this looming deadline complicates not only our ability to plan, but also our ability to obtain and clear new members.

Sincerely,

A handwritten signature in black ink that reads "L. Britt Snider". The signature is written in a cursive style with a long horizontal flourish at the end.

L. BRITT SNIDER

Chair