



NATIONAL SECURITY AGENCY
CENTRAL SECURITY SERVICE
FORT GEORGE G. MEADE, MARYLAND 20755

W

22 August 1983

Dr. Eric Walker
222 Hammond Building
University Park, PA 16802

Dear Dr. Walker:

You have satisfactorily completed an aperiodic polygraph examination conducted recently by a representative of the NSA Office of Security.

As you are aware, the cryptologic activities of this Agency are vital to our national defense. Your participation in this security process reinforces and enhances our mutual commitment to the protection of this Agency's mission.

I want to take this opportunity to thank you for your cooperation.

Sincerely,

PHILIP T. PEASE
Director of Security



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IDA
CRD

Serial: GC/150/83
26 May 1983

Dr. Lee Neuwirth
Director, Communications Research Division
Institute for Defense Analysis
Thanet Road
Princeton, NJ 08540

File

Dear Lee:

We have been provided a copy of the NSA Security Agreement with the additions and deletions some of your CRD employees suggest should be made in the standard form. After discussing the proposed changes, we have concluded that a letter to you setting forth NSA's interpretation of and bases for portions of the standard agreement should serve to allay the concerns raised. Needless to say, however, if more complete comments are needed, or a visit by various NSA personnel would be useful, we would be pleased to supplement the material set out here.

Please be assured that the purpose of the Security Agreement is not to impinge on scientific research or publication, but, rather, is to protect from improper disclosure certain categories of information, denominated Protected Information, which NSA is permitted and required by law to protect. The NSA Security Agreement does not effect any change in the laws or policies governing such information under which NSA affiliates (including contractor personnel) operate nor does it impose any new obligations concerning the disclosure of what has been defined as Protected Information.

An executed Security Agreement reflects the signatory's acknowledgement of his/her obligations to protect the information as defined and the fact that failure to abide by these obligations could result in the imposition of various sanctions, including civil remedies, against the individual. Civil sanctions are appropriate, in part, to preclude the possibility that a signatory who fails to perform obligations could profit from such a failure.

Additionally, the Security Agreement formalizes the procedure, i.e., pre-publication review, by which the individual may fulfill his or her obligations. By this review process the Agency can endeavor to preclude improper or inadvertent disclosures of Protected Information by persons who are knowledgeable of such information through their affiliation with NSA and an affiliated or formerly affiliated individual can publish their work with confidence they have not run afoul of their obligations vis-a-vis Protected Information. The individual, by seeking and

obtaining written authorization from the Agency in accordance with the Security Agreement, is fully protected since such authorization would be binding on the Government in all subsequent proceedings related to the material or information submitted for review.

A question you have raised is whether sanctions would be sought against an individual who publishes information derived independently of his association with NSA or IDA/CRD and without knowledge that such information is, if obtained through the association with NSA, Protected Information. The Security Agreement provides that information, to be protected, must fall within the definitions set forth in paragraphs 1(a) and (b) and must be obtained "as a result of my relationship with NSA". Thus, it would not be a violation of the Security Agreement for a signatory to publish without prepublication review information which, though within the meaning of the categories defined in the Security Agreement, was not in any way derived from the individual's affiliation with NSA. This principle should address the concern of CRD employees that post-CRD employment activity in scientific fields with application to areas of interest to NSA could be unreasonably circumscribed: assuming that the fact of NSA's interest in a particular subject is not revealed, the fact that NSA is "interested in" or "concerned about" the subject of an individual's publication is not by itself sufficient to require that the individual submit materials for prepublication review; rather, the information communicated by the publication must be obtained at least in part "as a result" of the individual's former relationship with NSA.

An additional general statement should also be made. You are correct that NSA does not consider that open source information (such as the content of standard college curricula or textbooks) is protected information; however, as you know, information derived from such an open source (i.e., derived from a source independent of NSA) could be Protected Information if discussed in a context which reveals Protected Information concerning the subject.

Paragraph 7(d) of the Security Agreement provides for the assignment to the Government of "all rights, title, and interest and all royalties, remuneration, or emolument of whatever form" which result from an individual's failure to adhere to the terms of the Security Agreement. The enforcement of the conditional assignment referred to could be the product of a judicial proceeding or administrative or negotiation procedures. The word "all" as it appears in the first and second lines of paragraph 7.(d) should be read as providing the individual notice that the government could, and might very well, pursue the entirety of an individual's "right, title and interest and all royalties, remuneration, or emolument" that have resulted from an improper

disclosure. It is certainly possible, however, that, in any particular case, the assignment to be made to the Government pursuant to court order or administrative or negotiation procedures could be less than all the monies or interest an individual would have in a publication, depending on the circumstances.

As discussed in my letter to you of 4 April 1983, the language "or any successor order" is included in order to avoid the necessity of re-executing thousands of Security Agreement forms in the event the Executive Order concerning classified information should be re-issued. As the Executive Order on point has now been re-issued in successive administrations this is a significant consideration. As I am certain CRD personnel recognize, the determination of whether information is presently properly classified must, necessarily, reflect sensitivities which exist at the time a disclosure of Protected Information is considered. As the needs of national security change, so must the government's response to those needs, and revisions to the classification Executive Order are one way in which the response occurs. The legal propriety of applying the most current classification standards to determine the status of information was recently acknowledged by the U.S. Court of Appeals for the District of Columbia in a Freedom of Information Act case. (Afshar v. Department of State, et al., D.C., No. 81-1299, March 15, 1983). To delete the language "or any successor order" would deprive the government of a needed ability to respond to changing national security needs. NSA recognizes, however, the seriousness of the concern that a later executive order could substantially expand the definition of classified information. With respect to this concern, three points should be noted: the first is that the concept of defining classified information by reference to an order which could be changed is not unique to the Security Agreement--the principal COMINT espionage statute does the same thing (18 U.S.C. §798). Secondly, it is clear that modifications or later issuances of the order would have to bear a reasonable relationship to the current order in order to be a "successor" order; thus, the kind of drastic expansion feared does not appear realistic. The relationship, though, to reiterate, cannot be complete, else the flexibility required to address changing circumstances would be lost. Finally, it goes virtually without saying that a disclosure proper at the time of occurrence could not be made improper by a later Executive Order expanding the definition of classified (or, protected) information.

I hope this letter satisfies the concerns of CRD personnel regarding the interpretation of the Security Agreement. CRD employees should feel free to place this letter in their IDA/CRD personnel files as evidence that they considered the interpretations provided for herein in executing the Security Agreement.