



## DEPARTMENT OF STATE

Washington, D.C. 20520

RELEASE IN PART  
B6

Dissent Channel Message

MEMORANDUM

September 15, 1977  
9/16

TO : S/P - Mr. Tony Lake  
Director, Planning Staff

FROM : ARA/CCA - [REDACTED]

SUBJECT: Decontrol and Release of LOU and Unclassified  
Material

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At the time of the OAS General Assembly in Grenada, I was taking a course in human rights at a local law school. When the unclassified reporting cable came in with the text of the resolution on human rights I wished to share it with my class. Because I had learned to my surprise, while doing an FOIA case, that the fact a document is unclassified does not mean it is part of the public domain, I made inquiries as to who could give me permission to release the cable to the public. FOIA told me that "the appropriate office" could authorize the release of unclassified cables but could not tell me who in the ARA hierarchy from a secretary to the Assistant Secretary could give me permission. FOIA also told me that all requests for documents had to come through its office as there are reproduction costs involved in releasing a document. When I stated that I wished to release the document on my initiative I was told that I "was going outside channels" and that I should talk to SY. I found SY equally unable to give me guidelines as to the rules for releasing unclassified and LOU material. Neither FOIA or SY could refer me to a regulation or an individual with the answer. I therefore drafted the enclosed memo to my ARA FOIA office. That office has not replied in writing, but has informed me that the answers to my questions are in 5 FAM 950, a position which was purportedly coordinated with SY and L/ARA.

It is obvious that 5 FAM 950 is hopelessly outdated and too vague to be any help. Section 952.1 stated that "among other things, information received through privileged sources and

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certain personnel, medical, investigative, commercial, and financial records shall be afforded physical protection comparable to that given "Confidential" material in order to safeguard it from unauthorized disclosure", and shall be marked LOU. In fact, instead of using LOU to protect the type of information listed, most offices appear to view it as a type of quasi security classification and mark LOU things the release of which might be harmful to national security but which do not seem to be quite harmful enough to rate the six-year protection of Confidential. LOU also seems to be commonly used to protect things the disclosure of which could be embarrassing to an office or an individual. 5 FAM 913 prohibits the classification of information "to conceal inefficiency of administrative error, to prevent embarrassment... or to prevent for any other reason the release of information which does not require protection in the interest of national security." Evidently these guidelines do not apply to the release of LOU or unclassified material. *non sequitur*

In addition to abuse of LOU to protect people from embarrassment, LOU is also obviously used improperly to protect information which should in fact be classified Confidential in the interest of national security. Several months ago the Overseas Private Investment Corporation sent me a large number of LOU cables with the demand that I authorize their release by COB. OPIC attorneys insisted that this was not an FOIA case and that they did not want to go through the State FOIA office in order to save time. However, in view of the fact that the documents were to be used in a public hearing I had to review them under FOIA standards. I had to upgrade six of them to Confidential in order to protect them. L/ARA agreed with this approach. However, L/ARA also said that in view of the fact that the documents which I refused were refused under FOIA standards, the refusal letter had to be signed by the Deputy Assistant Secretary, as in an FOIA case, even though my Office Director had the power to order the release of the LOU cables which were in fact released. This solution is not illogical but is nowhere expressed in any regulation, to my knowledge.

Since the advent of FOIA there does not seem to be any legal difference between LOU and unclassified. Title 22, Section 6.4 of the Foreign Relations Rules and Regulations lists eight categories of materials which can be protected

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under FOIA standards, none of which are classified under an executive order as needing protection for national security reasons. Since LOU is not established by any executive order and since Title 22 applies the same rules of decontrol to both LOU and unclassified material, the only difference between LOU and unclassified is that one can receive a reprimand from SY for not protecting LOU material. This distinction seems to me to be wholly irrational as it means that one can receive a reprimand for not protecting something which by law cannot receive more protection in the face of a public inquiry than an unclassified piece of material.

11 A new definition of LOU should be developed which takes the present realities into account. Such issues as what effect the Privacy Act has on unclassified documents and what we should do about the CIA's and NSC's "For Official Use Only" category must be considered. There are also interesting side questions such as how to protect unclassified Dissent Channel messages. Title 22 and 5 FAM 5.90 have to be rewritten, taking into account the judicial interpretations of those regulations which have not been reflected by changed language.

I believe one sensible solution would be to state that anything which can or should still be protected by the FOIA or Privacy Acts or any other legal requirement should be classified LOU, a category which should be established on a government wide basis by executive order. All other uncontrolled material would be marked unclassified, with the understanding that unclassified means what a lay interpretation would imply now -- i.e. something which any employee can share with anyone.

Attachment:

As stated

Draft: ARA/CCA-  
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DEPARTMENT OF STATE

Washington, D.C. 20520

September 30, 1977

MEMORANDUM

TO : ARA/CCA -

FROM : S/P - Anthony Lake *TL*

SUBJECT: Dissent Channel Message

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This will acknowledge receipt of your dissent channel memorandum on decontrol and release of LOU and unclassified material. Cameron Hume of the Policy Planning Staff has been named coordinator in charge of a substantive reply. Copies of your memo have been distributed to the Secretary, the Executive Secretary and the Chairman of the Open Forum, as well as to the Assistant Secretary for Public Affairs and the Legal Advisor. We commend your use of the dissent channel and will reply as promptly as possible to the views you have submitted.



DEPARTMENT OF STATE

Washington, D.C. 20520

RELEASE IN PART  
B6

March 27, 1978

Dear [redacted]

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This letter is in response to your dissent channel message concerning decontrol and release of Limited Official Use and unclassified material.

As you are aware, 5 FAM 952.1 describes the proper basis for the marking of any document Limited Official Use. "Certain official information and material which is not national security information and, therefore, cannot be classified, is nonetheless protected by law against disclosure." Several laws provide the basis for this protection. One main source of law to protect information against disclosure is the Privacy Act; thus the Biographic Register and personnel records are properly designated Limited Official Use. Another is found in Congressional legislation that protects trade secrets and various other information against unwarranted disclosure. The Freedom of Information Act recognizes several categories of information which can be withheld from public disclosure. This is not to say, of course, that all information which can be withheld should be designated LOU. According to the Foreign Affairs Manual, unless there is a legal requirement to protect information for reasons other than national security, it cannot properly be marked Limited Official Use.

There is absolutely no question but that the majority of documents marked Limited Official Use have not been designated on the basis of specific legal requirements.

[redacted]  
Bureau of Inter-American Affairs,  
Department of State.

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However, LOU remains a valuable designation because it affords a degree of protection to sensitive information which is not classified.

The classification system itself has been under review through the process of a Presidential Review Memorandum. This review will result in a new Executive Order on classification of national security information. The text of this order should be issued some time this Spring. The order generally defines more clearly and makes more restrictive the use of classification designations, and will make clear that other designations, such as "Limited Official Use" are not to be used to protect national security information.

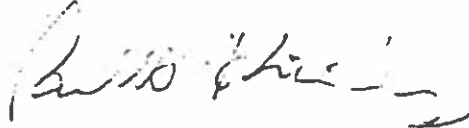
While Limited Official Use is not a national security designation and therefore not a subject of the new Executive Order, it would be helpful if, at the time the State Department issues its implementing regulations and instructions to deal with the new Executive Order, the proper use of Limited Official Use is brought to the attention of classifying officers. In particular, it should be made clear that this designation should be used only when a specified legal or regulatory basis exists. Officers should also be aware that national security information should be classified as provided for in the new Executive Order. The regulations governing handling and storage of LOU material will also be reviewed at that time.

Your second question concerned the release of unclassified material. As you are aware Congress has provided in the Freedom of Information Act for standards and procedures to be used in releasing government material upon request. In response to this Congressional mandate, the Department drew up regulations to implement the law. The basic point in practice is that the proposed release should be authorized by the office that has the responsibility for the record in question. I am enclosing a copy of these regulations which answer your specific questions on FOIA procedures. If you have any particular complaints about the manner in which the Department responded to the request to release the reporting cable you spoke of, these regulations provide for an appeal of an initial denial.

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I am sending a copy of this letter to the Chairman of the Committee on Classification Policy, Assistant Secretary Hodding Carter, so that your concerns about the improper use of the designation Limited Official Use can be dealt with in the process of updating State Department regulations to implement the new Executive Order on classification policy.

Sincerely yours,



Paul H. Kreisberg, Acting  
Director, Policy Planning Staff

Enclosure:

As stated

*Cleared PA - W Blair  
L - J Smith*