



# Information Security Oversight Office

National Archives and Records Administration

700 Pennsylvania Avenue, NW

Washington, DC 20408-0001

LSOO Off. file



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192-44-77

The Honorable Alberto R. Gonzales  
Attorney General  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

Dear Mr. Attorney General:

Pursuant to §6.2(b), Executive Order 12958, as amended, "Classified National Security Information" (the Order), I request that you render an interpretation as to whether the Office of the Vice President of the United States (OVP) is an agency as defined in §6.1(b) of the Order and thus responsible to fulfill the responsibilities of an agency as set forth in the Order to include submitting reports to the Director of the Information Security Oversight Office (ISOO) relating to its security classification program.

## Background

One of my responsibilities under the Order is to consider and take action on complaints and suggestions from persons within or outside the Government with respect to the administration of the program established under the Order. In that regard, several months ago I received a letter (Tab A) suggesting that the OVP is willfully violating a provision of the Order and of "Classified National Security Information Directive No. 1" (32 CFR Part 2001) (the Directive), which implements the Order. The specific concern is with respect to the failure of the OVP to "report annually to the Director of ISOO statistics related to its security classification program" in accordance with §2001.80 of the Directive.

Per the attached news article ("Cheney Keeps Classification Activity Secret" by Mark Silva, *Chicago Tribune*, May 27, 2006) (Tab B) the OVP spokesperson indicated that "This has been reviewed and it's been determined that the reporting requirement does not apply to [the Office of the Vice President], which has both legislative and executive functions."

In response to this complaint, I corresponded with the OVP (Tabs C & D) and indicated that I took this explanation to mean that the OVP does not believe it is included in the definition of "agency" as set forth in the Order, since it does not consider itself an "entity within the executive branch that comes into the possession of classified information" (emphasis added) in that it has both legislative and executive functions. Replies to these queries have not been received.

## Analysis

**Consistency in application:** An interpretation that the OVP is not subject to the reporting provisions of the Order is fairly recent, in that up until 2002, the OVP did submit annual reports to this office.

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**Plain text reading:** There are several explicit references in the Order to the constitutional position of Vice President that confer specific authorities and exemptions upon the individual encumbering that position.<sup>1</sup> There is but a single explicit reference to the government entity (the OVP) which serves the Vice President.<sup>2</sup> This sole explicit reference for the purpose of exempting the OVP from a provision of the Order supports an interpretation that the rest of the Order does apply, to include the Order's definition of an "agency;" otherwise there would be no need for an exemption.

**Policy Implications:** If the OVP is not considered an entity within the executive branch, I am concerned that this could impede access to classified information by OVP staff, in that such access would be considered a disclosure outside the executive branch. While I recognize that OVP staff may, at times, be supporting the Vice President's performance of legislative duties, I believe that most, if not all, disclosures of classified information to OVP staff by other agencies and entities within the executive branch are regarded by those agencies as disclosures within the executive branch in that they occur in support of the Vice President's performance of executive duties.

### Conclusion

I believe that OVP staff, when they are supporting the Vice President in the performance of executive duties, are an entity within the executive branch that comes into possession of classified information and are thus, for purposes of the Order, an agency. As such, it is entirely appropriate that security classification activity by OVP staff in supporting the Vice President's performance of executive duties be reportable to this office in accordance §5.2(b)(4) and 5.4(d)(8) of the Order as well as §2001.80 and 2001.81 of the Directive. I also believe it is appropriate to affirm that all provisions of the Order apply to the staff of the OVP when they are acting in support of the Vice President's performance of executive duties. Absent such affirmation, I would recommend that the Order be revised to clarify the extent to which it pertains to the staff of the OVP.

Sincerely,

(signed) J. William Leonard

J. WILLIAM LEONARD  
Director

Enclosures

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<sup>1</sup> See § 1.3(a)(1), 1.3(c)(2), 1.3(c)(3), 3.3(b)(7), 3.5(b)(1), 4.4(a)(2), 4.4(a)(3), 6.1(cc). Some of these provisions state that they apply to the Vice President "in the performance of executive duties."

<sup>2</sup> See § 3.5(b)(2) which exempts "in the performance of executive duties, the incumbent Vice President's Staff" from the mandatory declassification review provisions of the Order

cc: Mr. David S. Addington  
Assistant to the President and  
Chief of Staff to the Vice President

Mr. Steven Bradbury  
Acting Assistant Attorney General  
Office of Legal Counsel