

IF CIA PWNEED SSCIS SEGREGATED SHARED DRIVE, THE TORTURE REPORT SHOULD BE FOIA-ABLE

As reader Tom has helpfully reminded me, both Mark Udall's follow-up questions for Stephen Preston and the CIA's declaration in ACLU's FOIA to liberate the Torture Report describe the arrangements CIA required of the Senate Intelligence Committee staffers as they were working on the Torture Report.

Udall described how the CIA insisted on an "unnecessary multi-layered" process that added significantly to the time and cost of the report.

The CIA declined to provide the Senate Select Committee on Intelligence with access to CIA records at the Committee's secure office space in the Hart Senate Office Building. Instead, the CIA insisted that the Committee review documents at a government building in Virginia. Once the CIA produced relevant documents related to the CIA detention and interrogation program, the CIA then insisted that CIA personnel—and private contractors employed by the CIA—review each document multiple times to ensure unrelated documents were not provided to a small number of fully cleared Committee staff. What role did you play in the decision to employ these unnecessary multi-layered review steps that delayed CIA document production to the Committee at significant governmental expense?

And the CIA declaration emphasizes how SSCI retained complete control over the materials in

the Sensitive Compartmented Information Facility in which its staffers had been required to work.

One key principle necessary to this inter-branch accommodation, and a condition upon which SSCI insisted, was that the materials created by SSCI personnel on this segregated shared drive would not become "agency records" even though this work product was being created and stored on a CIA computer system. Specifically, in a 2 June 2009 letter from the SSCI Chairman and Vice Chairman to the CIA Director, the Committee expressly stated that the SSCI's work product, including "draft and final recommendations, reports or other materials generated by Committee staff or Members, are the property of the Committee" and "remain congressional records in their entirety." The SSCI further provided that the "disposition and control over these records, even after the completion of the Committee's review, lies exclusively with the Committee."

[snip]

Based on this inter-branch accommodation, SSCI personnel used the segregated shared drive to draft the document that is the subject of this litigation. As sections of the report reached a certain stage, the SSCI worked with the CIA information technology and security personnel to transfer these drafts from the segregated shared drive to the SSCI's secure facilities at the U.S. Capitol complex so that the Committee could complete the drafting process in its workspaces.

Here's the thing. The purported control SSCI had over the materials in this SCIF is central to CIA's claim that the Torture Report is not an Agency document and therefore is immune from

FOIA.

If SSCI did not have complete control over this material – if CIA could spy on SSCI at will (if, as seems to be the case when viewed in retrospect) – then it guts their argument that the Torture Report is a Congressional document.

If CIA pwned SSCI in that SCIF, then it should make this material (at least the draft reports, before they got moved over to SSCI's own SCIF) FOIA-able.

So either CIA should be prosecuted for hacking SSCI. Or it should hand over the last draft of the report that resided on servers it felt free to hack into.