

~~TOP SECRET~~~~Security Information~~~~TOP SECRET - SECURITY INFORMATION~~

MEMORANDUM FOR THE RECORD

15 October 1953

SUBJECT: Release of the M-209 to Foreign Nations

OGA

1. Lt. Colonel Long, G-2, called to say G-2 had a request from the French for 350 M-209's for French Indo-China and wanted to know why they couldn't be released, especially in view of the decision by USCIB on 13 October 1953. He stated that on the one hand the U.S. was giving away (to the French) certain things but apparently refusing to do so on the other. I said I didn't think the cases were necessarily equivalent.
2. The problem of release of the M-209 has a long history. On several occasions, the Signal Corps has received requests for release from foreign countries, largely I think from South American countries. These requests have been referred to ASA which has consistently recommended that the M-209 not be released, primarily on grounds of security
3. The legal matter of patent rights has always been in the back of people's minds but not used as a reason for refusing to release the M-209, even though many were given out during the war.
4. Recently, I asked the NSA Legal Advisor to review the U.S. contract with Hagelin in order to find out just what the U.S. rights in the patent amounted to. He told me that the contract itself permitted "manufacture, use and sale." There seemed to be, however, another contract or supplement which he did not have, which conveyed to Hagelin from the U.S. certain rights. The nature of these are not known at the present time. The Legal Advisor stated that it appeared that the U.S. could sell (or give) the M-209 to a foreign nation, provided the sale was made in the U.S. In this way, the U.S. could legally avoid suit by Hagelin for infringement of patent rights, but it would not protect the user if Hagelin had filed patents in the user's country. Hagelin could sue the user for using his invention but the U.S. need not accept suit outside the U.S.
5. Even though a legal loophole might exist, lacking the missing supplement which might remove this loophole, there are reasons at the moment for NSA to take the position that M-209s should not be released because of

EO 3.3(h)(2)
PL 86-36/50 USC 3605~~TOP SECRET~~*File: Crypt.
Equip & materials
Release of.*

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PL 86-36/50 USC 3605

MEMORANDUM FOR THE RECORD Cont'd

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6. The gist of the foregoing was conveyed to Colonel Long who seemed to understand. He stated that he would stall until Friedman's results are known.

7. Shortly after the call from Colonel Long, Major Hamilton, ASA, called on the same subject. He agreed that action by the U.S. at this time might affect our relations [redacted] What he needed was an excuse for delaying action. I suggested that the legal angle be explored thoroughly, mentioned that we were missing a supplement contract, and would help him in establishing the legal rights of [redacted] He is to check Signal Corps files for the missing portion. He stated that there is difficulty in telling G-4 that the equipments cannot be released, because there are sufficient usable quantities on hand, and the classification is no barrier. Apparently, G-4 is insisting that the available machines must be made available on request to approved nations. I believe he will use the legal study as a means of deferring action at this time.

James H. Douglas
JAMES H. DOUGLAS

*Mr. O'Gara, G-2,
visited c/s on Friday
16 Oct, on the above
matter. Capt. Frost, knowing
Gen. McBlair was with the
Director, suggested the two
advise the matter. I was informed
by Capt. Frost that the General
told Gen. McBlair that he could not go
along with release at this time.
JHD.*

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