

無題

RE: 【情報共有】OHCHR・特別報告者への回答の取り進め方

内調職員049 (内閣情報調査室)

送信日時: 2013年11月27日 13:55

宛先:

添付ファイル: 国連人権理事会特別報告者の書簡に対する回答 (提出用).docx (20 KB)
; 20131111_法案のポイント英訳.pptx (101 KB) ; 20131111_説明資料英訳.ppt (267 KB)
; Specified State Secrets P~1.docx (17 KB)

様

当方よりのメモだしを送付いたします。

なお、本メモ出しに関する当方の考え方は、以下のとおりですのでよろしくお願いいたします。

また、ご参考までに、当方が作成した概要資料の英語版と、外務省が作成したトーキングポイント (当室は昨夜入手したため、内容について確認は済んでおりません。) を別添いたします。

よろしくお願いいたします。

拝

内閣官房内閣情報調査室

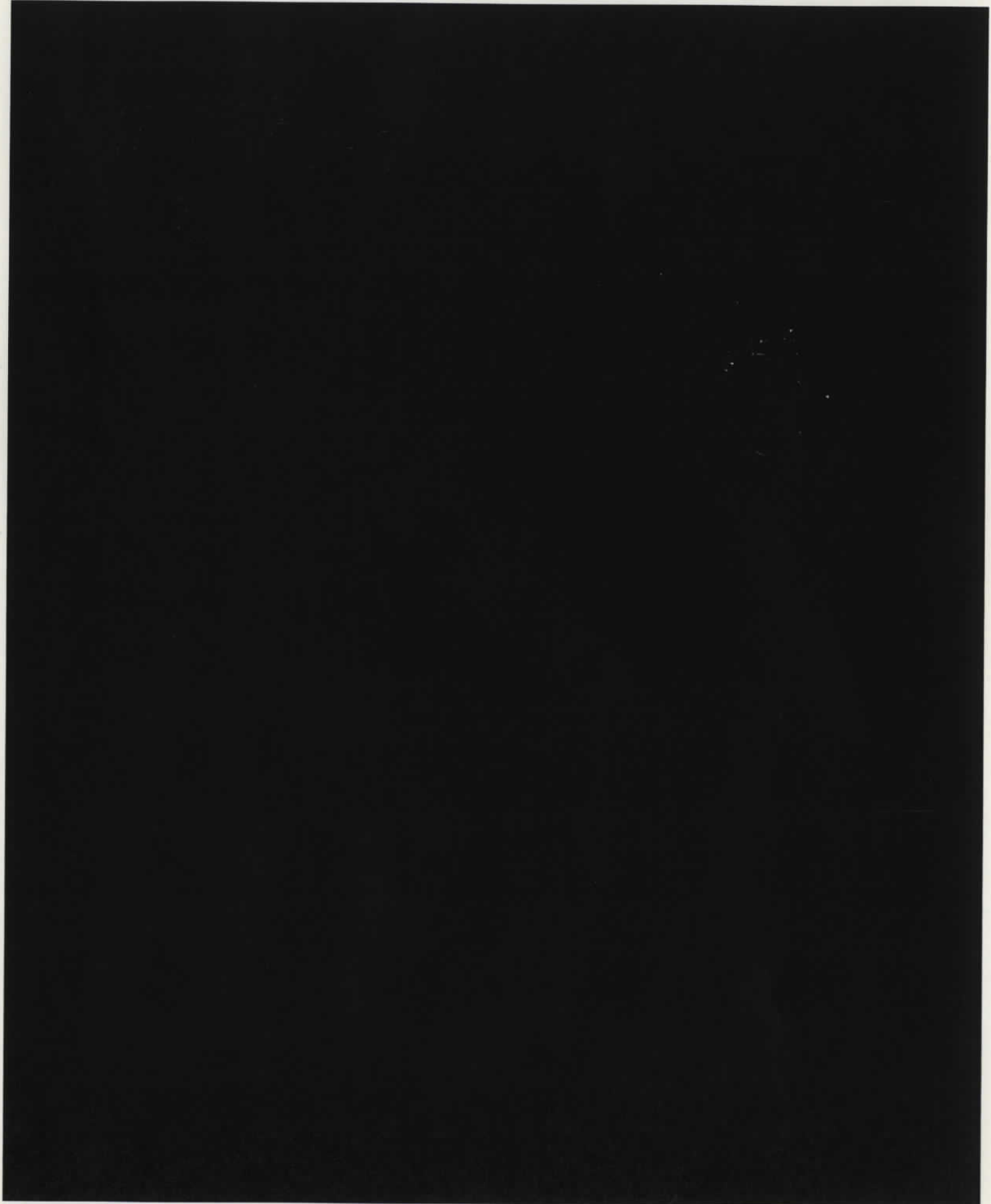
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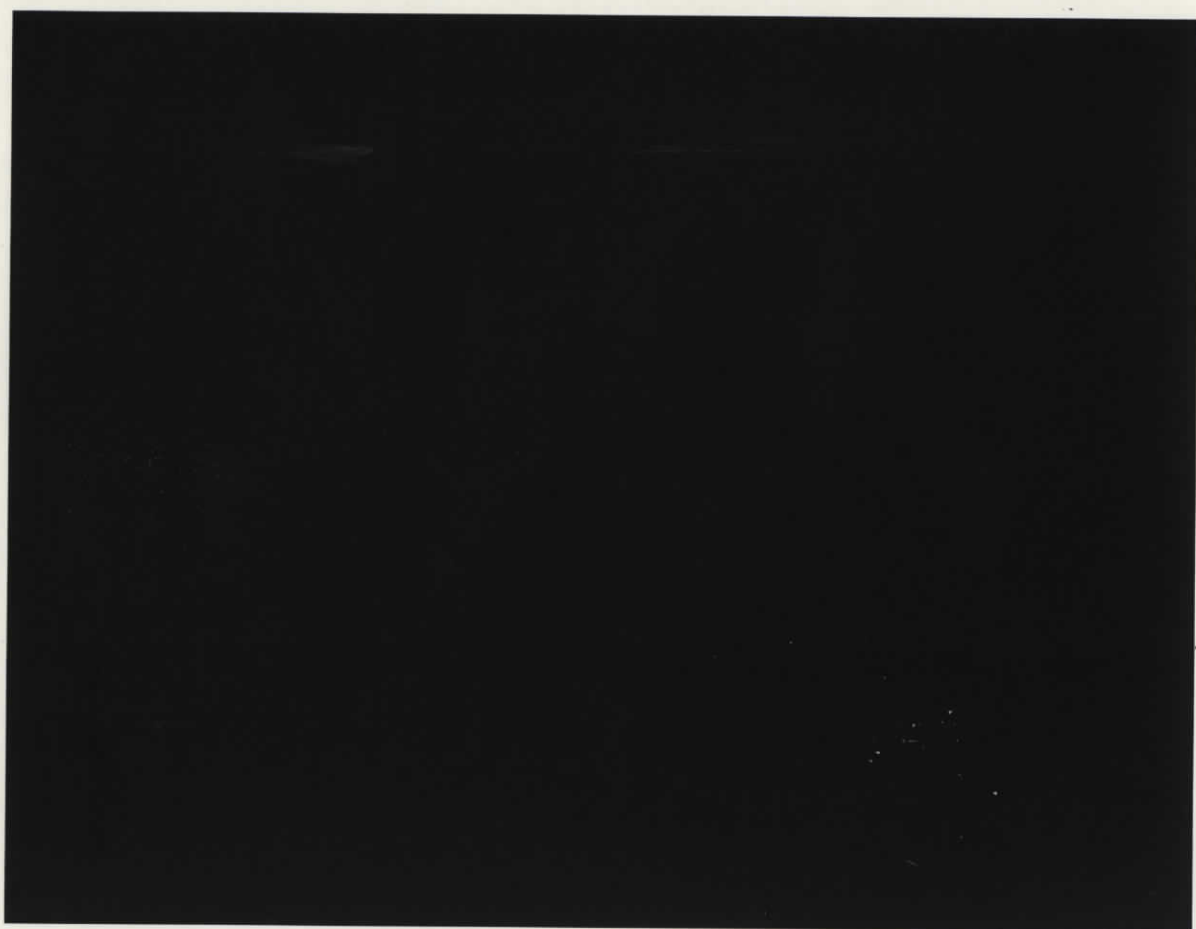
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国連人権理事会特別報告者の書簡に対する回答
(案)





Gist of the Bill on the Protection of Specially Designated Secrets (SDS)

Provisional Translation

Gist of the Bill

Specially Designated Secrets – designated by the head of each ministry

Secret under National Public Service Act

Specially Designated Secrets

Specially Designated Secrets

Shall be information pertaining to national security and

Fall under the following categories listed in the act:

- (1) Defense;
- (2) Foreign Affairs;
- (3) Prevention of Designated Harmful Activities;
- (4) Prevention of Terrorism;

+

Require special secrecy.

- * Term of validity of designation shall be up to five years but renewable. The term of over 30 years in total shall need approval of the cabinet.
- * The government shall set guidelines for the interpretation of the act concerning designation etc. taking input from experts into consideration.

Limitations on access to SDS

Those granted security clearance shall be authorized to have access to SDS.

Establishment of a framework to provide or share SDS inside and outside ministries

Punishment for unauthorized disclosure of SDS (up to ten years of imprisonment etc.)

- * The bill stipulates prohibition on undue infringement on fundamental human rights of the people by stretching the law and due consideration of the freedom of the press and news gathering that contributes to guaranteeing the people's right to know.
- * The bill also stipulates news gathering by those engaged in the publishing and press shall be lawful as long as it is aimed exclusively to serve public interests and not judged to be done through violations of laws or extremely unreasonable means.

Overview of the Bill on the Protection of Specially Designated Secrets (SDS)

Cabinet Secretariat

Overview of the Bill on SDS Protection ① – Designation of SDS

Provisional Translation

1 The head of each ministry shall designate as Specially Designated Secrets information which requires special secrecy among that listed in the appended table and kept undisclosed because unauthorized disclosure thereof would cause severe damage to national security of Japan.

Appended Table

Item (i) Defense

* Equivalent to the Appended Table 4 of the SDF Act

- (a) Operation of the Self-Defense Forces and relevant analysis, plans or research
- (b) Defense-related signal or imagery information or other important information
- (c) Collection and organization capacity of information in (b)
- (d) Analysis, plans or research pertaining to development of defense capability
- (e) Variety and quantity of weapons, ammunition, aircraft and other equipment for defense activities
- (f) Structure of communications network and means of communications for defense activities
- (g) Cryptology used for defense activities
- (h) Specifications, performance or usage of weapons, ammunition, aircraft or other equipment for defense activities including those at the R&D stage
- (i) Methods of production, inspection, repair or examination of weapons, ammunition, aircraft and other equipment for defense activities including those at the R&D stage
- (j) Design, capacity or purpose of facilities for defense activities

Item (ii) Foreign Affairs

- (a) Policy or content of negotiations or cooperation with foreign governments or international organizations pertaining to safety of lives and physical bodies of the people, territorial integrity and other important issues regarding national security
- (b) Measures or policy including embargoes on imports or exports which Japan carries out for national security
- (c) Information which require protection under treaties or other international agreements and other important information that are collected in relation to national security
- (d) Collection and organization of information listed in (c) or capacity for them
- (e) Cryptology for diplomatic use including communications between the Ministry of Foreign Affairs and Japanese diplomatic establishment

Item (iii) Prevention of Designated Harmful Activities

- (a) Measures to prevent Designated Harmful Activities
- (b) Information collected and provided by international organizations or foreign governments on the prevention of Designated Harmful Activities
- (c) Collection and organization capacity of information in (b)
- (d) Cryptology used for the prevention of Designated Harmful Activities

Item (iv) Prevention of Terrorism

- (a) Measures to prevent terrorism and relevant plans or research
- (b) Information collected and provided by international organizations or foreign governments on the prevention of terrorism and other important information
- (c) Collection and organization capacity of information in (b)
- (d) Cryptology used for the prevention of terrorism

2 The head of each ministry shall set the term of validity of designation – five years at the longest but renewable – and cancel the designation even before the expiration date as soon as the designated information are found not to meet the requirements for designation.

3 The head of each ministry, when the term exceeds 30 years in total, shall need approval of the cabinet by providing reasons why it is necessary to keep information in question undisclosed even from the perspective of fulfilling the responsibility of the government to explain its activities to the people in order to ensure the safety of the state and people.

4 The head of each ministry shall take necessary measures to protect SDS including restricting access to SDS and giving classification markings to documents containing SDS.

Overview of the Bill on SDS Protection ② – Security Clearance

Provisional
Translation

1 Limitations on Access to SDS

Access to SDS shall be limited to those who are judged not to have the risk of unauthorized disclosure of SDS in the security clearance process among government personnel, employees of contractors and prefectural police officers.

* Heads of administrative organs, Ministers, Deputy Chief Cabinet Secretaries, Special Advisors to the Prime Minister, Senior Vice-Ministers, Parliamentary Secretaries and other executives specified in an ordinance based on their duties shall be allowed to access to SDS without undergoing the security clearance process.

** Those receiving SDS for the public interests (see page 3) does not need to undergo the process.

2 Adjudicators

The head of each ministry (or the chief of each prefectural police headquarters)

3 Examinees

Those who are expected to access to SDS among government personnel, employees of contractors or prefectural police officers

4 Matters for Investigation

- (1) Involvement in Designated Harmful Activities and terrorism
- (2) Criminal and disciplinary records
- (3) Records of abuse of information
- (4) Misuse of drug and its influence

* With respect to investigation regarding (1), the scope of investigation into examinees' relatives (spouse, parents, children and siblings as well as the spouse' parents and children) and cohabitants shall be limited to their name, date of birth, nationality and address.

- (5) Mental health
- (6) Use of alcohol
- (7) Financial records

5 Procedures

Obtain examinees' consent

To an extent necessary for the procedures,

- (i) Ask questions to the examinees and those concerned including their supervisors and colleagues;
- (ii) Request the examinees to submit materials;
- (iii) Make inquiries to public or private organizations

Determine whether the

examinees have the risk of unauthorized disclosure of SDS

Notify the examinees

of the results

Respond to the examinees' complaints

6 Ban on use for unintended purposes of information obtained in the procedures

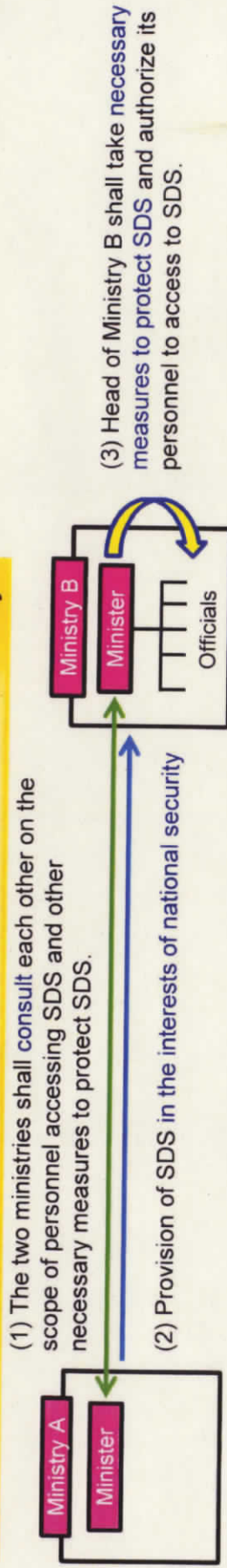
- (1) Refusal to undergo the security clearance procedures
- (2) Results of the procedures
- (3) Personal information obtained in the procedures

Shall not be used for purposes other than the original intent except when the examinees are alleged to deserve a disciplinary punishment under the National Public Service Act.

Overview of the Bill on SDS Protection ③ – Provision of SDS

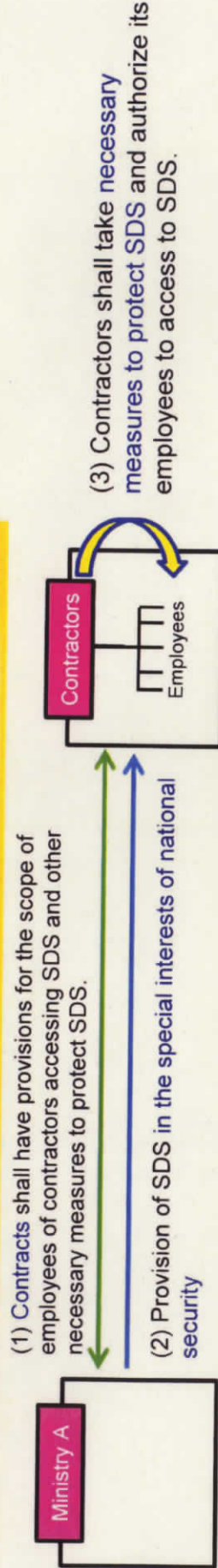
Provisional Translation

1 Provision of SDS for Other Ministries for Needs of National Security



* The Commissioner-General of the National Police Agency shall, when providing SDS for prefectural police, give instructions to the recipient police on necessary measures to protect SDS.

2 Provision of SDS for Contractors for Special Needs of National Security



3 Other Cases of SDS Provision for needs of Public Interests

Besides above cases, the head of each ministry shall be allowed to provide SDS in the following cases:

- 1 Undisclosed reviews or research by the Diet, criminal investigations and other activities for the special public interests on condition that measures to protect SDS shall be taken and that the head confirms the provision would not cause severe damage to national security of Japan;
- 2 Presentation of SDS to courts in accordance with Paragraph 6, Article 223 of the Code of Civil Procedure or review boards for examinations in accordance with Paragraph 1, Article 9 of the Act on the Establishment of the Information Disclosure and Personal Information Protection Review Board (in camera in both cases).

Overview of the Bill on SDS Protection ④ – Penalty and Others

Provisional
Translation

Penalty for Unauthorized Disclosure of SDS

1 Intentional or accidental leakage of SDS shall be punished when committed by the followings:

(1) Those accessing SDS as their duties

Intentional: Imprisonment with work for not more than 10 years

Accidental: Imprisonment without work for not more than 2 years or fine of not more than 500,000 yen

(2) Those receiving and thus knowing SDS from ministries for needs of public interests

Intentional: Imprisonment with work for not more than 5 years

Accidental: Imprisonment without work for not more than 1 year or fine of not more than 300,000 yen

2 Acquisition of SDS through the following acts shall be punished by imprisonment of up to ten years:

(1) Fraud, assault or intimidation; (2) Theft; (3) Intrusion on relevant facilities; (4) Eavesdropping on wired telecommunications

(5) Unauthorized access; (6) Any other act excluding (2) to (5) that undermines control of SDS holders.

3 Those who attempt, conspire to effect, instigate or incite intentional leakage or acquisition of SDS through the acts listed above shall be punished.

Other Issues

1 The government shall set guidelines concerning designation of SDS, etc. for uniform implementation of the act, taking into consideration input from persons who have excellent knowledge and experience on protection of information pertaining to national security, information disclosure, management of public documents and archives, etc.

2 The bill stipulates prohibition on undue infringement on fundamental human rights of the people by stretching the law and due consideration of the freedom of the press and news gathering that contributes to guaranteeing the people's right to know.

3 The bill also stipulates news gathering by those engaged in the publishing and press shall be lawful as long as it is aimed exclusively to serve public interests and not judged to be done through violations of laws or extremely unreasonable means.

4 The bill shall take effect on the ordinance-designated day within one year of its promulgation and stipulate transitional measures regarding limiting SDS handlers.

5 The Self-Defense Forces Law shall be partially revised to delete provisions for Defense Secrets (Bouei Himitsu).

6 The Cabinet Act shall be partially revised so that the Director of Cabinet Intelligence shall administer the affairs of protection of Specially Designated Secrets.

無題
【新美審議官コメント】OHCHR・特別報告者への回答の取り進め方

送信日時: 2013年11月28日 11:39

宛先: 内調職員049 (内閣情報調査室);

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添付ファイル: 新美審議官コメント (アドバンス) 公電案.docx (16 KB)

内調 様
官総 様

現在ご決裁いただいている回電案ですが、新美審議官から現時点版を見せて欲しいと言われ、コメントが入りましたので、見え消しで別添のとおりお伝えします。

五月雨式となり恐縮ですが、ご決裁方、引き続きよろしくお願いいたします。

総人

【公電案】

特定秘密保護法案（特別報告者からの書簡：OHCHR 側との意見交換）

