

Glossary of Key Terms and Acronyms

Administrative Appeal: A submission made by a requester asking an agency to reconsider its initial adverse determination on his or her request and making arguments as to why that decision was improper.

Agency: An agency within the meaning of the FOIA (i.e., one required to respond to FOIA requests) is “any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency” (5 U.S.C. § 552(f)(1)). This definition includes most executive branch agencies, except those components of the Executive Office of the President the primary function of which is to advise the president. Congress, the courts, and the president himself are not agencies subject to the FOIA.

Agency Record: Courts have defined an “agency record” as any record that is created or obtained by the agency and is in the control of the agency at the time the request is made. The FOIA covers records maintained by the agency in any format, including electronic.

Attorney–Client Privilege: An evidentiary privilege that protects confidential communications between a client and his or her attorney when the communications are based on confidential information provided by the client in order to obtain legal advice. The attorney–client privilege is incorporated into FOIA Exemption 5 and applies to communications between agency officials and agency attorneys.

Automatic Declassification: Process established by Executive Order (EO) 12958, as amended, whereby records of permanent historical value that are more than twenty-five years old are automatically declassified. The EO permits agencies to designate specific information as exempt from automatic declassification if release could damage the national security. Records that are automatically declassified do not immediately become available to the public, but rather must first be processed for release by the National Archives.

Classified Information (or Security Classified Information): Information that, if released, could cause harm to national security within the meaning of the Executive Order on Classification (currently, EO 12958, as amended by EO 13292) and that has been classified by an appropriate authority. Classification of information imposes restrictions on access to the information by individuals within and outside of the government. There are three classification levels: confidential, secret, and top secret.

Commercial Requester: FOIA requester category that covers companies or individuals requesting information for a commercial, trade, or profit-seeking purpose. A commercial requester pays the maximum processing fees for search, review, and duplication.

Compelling Need: In order to be granted expedited processing, a requester must show “compelling need,” defined as circumstances where “failure to obtain requested records on an expedited basis under this paragraph could reasonably be expected to pose an imminent threat to the life or physical safety of an individual” or where there is an “urgency to inform the public concerning actual or alleged Federal Government activity” (5 U.S.C. § 552(a)(6)(E)(v)).

Deliberative Process Privilege: A privilege protecting the policymaking process in order to encourage open discussion among government decision makers. The deliberative process privilege is incorporated into FOIA Exemption 5 and permits withholding of records that are both predecisional and deliberative, such as advice, recommendations, and opinions that are part of an agency decision-making process.

Electronic Reading Room: A portion of an agency Web site that makes available electronic versions of certain records that are required to be disclosed under the FOIA (5 U.S.C. § 552(a)(2)). The categories of information that must be in the electronic reading room include final opinions and orders made in the adjudication of cases by the agency, policy statements and interpretations adopted by the agency, administrative staff manuals and instructions that affect the public, and frequently requested records.

Executive Order 12958, as amended by EO 13292: Executive order governing classification of information. See “classified information.”

Executive Order 13392: Executive order entitled “Improving Agency Disclosure of Information,” issued by President Bush on December 14, 2005, and directing federal agencies to improve their FOIA operations through greater efficiency and a new approach to FOIA customer service.

Exemption: The FOIA contains nine specifically enumerated exemptions that set forth the bases for withholding information requested by a member of the public under the FOIA. The government agency bears the burden of demonstrating that information falls within one of the nine exemptions.

Exemption 2 “Low”: Component of FOIA Exemption 2 that protects internal agency matters in which the public could not reasonably be expected to have any interest.

Exemption 2 “High”: Component of FOIA Exemption 2 that protects internal agency matters where disclosure would risk circumvention of the law or agency regulation, although not all courts have accepted this interpretation of the FOIA statutory language.

Exhaustion of Remedies: Before filing a lawsuit in federal court, a requester must exhaust all administrative remedies by filing an administrative appeal. The requester may be deemed to have exhausted his or her remedies if the time period for the agency to process the request or appeal has passed and the agency has not responded.

Expedited Processing: The FOIA requires agencies to provide for expedited processing of requests where there is a “compelling need” or in other circumstances determined by each agency. The agency must make a determination whether to grant expedited processing within ten days and must process expedited requests “as soon as practicable.”

Federal Register: The official daily publication for rules, proposed rules, and notices of federal agencies and organizations, as well as executive orders and other presidential documents.

Fee Status (or Fee Categories): The FOIA specifies three different categories of FOIA requester. A requester's status (i.e., placement within one of the specified categories) determines the type of fees the requester may be charged. The fee status categories include: commercial requesters (search, review, and duplication fees); educational or noncommercial scientific institution or representative of the news media requesters (duplication fees only); and all other requesters (search and duplication fees) (5 U.S.C. § 552(a)(4)(A)(ii)).

Fee Waiver (or Public Interest Fee Waiver): The FOIA directs agencies to waive or reduce fees charged to a requester "if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester" (5 U.S.C. § 552(a)(4)(A)(ii)(II)).

Final Determination: An agency's final decision on a FOIA request, including the decision on whether or not to release the requested information.

Glomar: An agency response to a FOIA request in which the agency refuses to confirm or deny the existence of the requested records. The Glomar response is invoked when an acknowledgement that the records exist would itself cause harm protected by one of the FOIA exemptions (generally, national security or privacy).

Historical Record: Term used in this guide and elsewhere to refer generally to government records older than twenty-five years, the point at which many agency records are transferred to NARA and classified records are automatically declassified under EO 12958.

Information Security Oversight Office (ISOO): Office responsible to the president for policy and oversight of the government-wide security classification system and the National Industrial Security Program. ISOO is a component of NARA and receives its policy and program guidance from the National Security Council (NSC).

Interagency Security Classification Appeals Panel (ISCAP): Created by EO 12958 in 1995, ISCAP is a six-member body consisting of senior level representatives appointed by the Departments of State, Defense, and Justice; the Central Intelligence Agency; NARA; and the Assistant to the President for National Security Affairs, with a chair appointed by the President. ISCAP's functions include deciding mandatory declassification review appeals from requesters whose requests have been denied at the agency level; ruling on appeals filed under sec. 1.8 of EO 12958; and approving, denying, or amending agency exemptions from automatic declassification.

Law Enforcement Proceedings: Under FOIA Exemption 7, agencies may withhold information "compiled for law enforcement purposes," which includes both civil and criminal judicial proceedings as well as administrative enforcement proceedings.

Mandatory Declassification Review (MDR): A process established in EO 12958, as amended, which allows a member of the public to request that an agency review a classified record to determine whether continued classification is warranted under the executive order or whether some or all of the record can be declassified and released. The MDR process operates much like the FOIA process, with requests and administrative appeals; however, an MDR requester may file an additional appeal with ISCAP but may not file a lawsuit challenging a denial.

No Records: Response to a FOIA request when an agency conducts a search and does not find any agency records that satisfy the request. Requesters may appeal a “no records” response and require the agency to conduct a new search.

Operational Files: Designated intelligence agency files that are excluded from search and review under the FOIA.

Predecisional: Records related to a specific decision making process that are drafted prior to a final decision being made within the agency. Records that are predecisional may be exempt under the deliberative process privilege of Exemption 5, but postdecisional documents like final opinions and administrative decisions cannot be withheld under that exemption.

Presidential Records Act (PRA): Statute governing the preservation and release of official records of presidents and vice presidents (beginning with the Reagan administration). The PRA mandates that all presidential records become the property of the public, to be managed by NARA after the president leaves office, and establishes a framework for public access to the records beginning five years after the end of the administration (44 U.S.C. §§ 2201-2207).

Privacy Act: Statute that restricts disclosure of personally identifiable information in government records and establishes a system for individuals to access records about themselves as well as to correct government records that are inaccurate or incomplete (5 U.S.C. § 552a).

Privacy Waiver: Waiver that an agency may require a FOIA requester to submit before the agency will release personal information about an individual.

Public Interest: When considering the application of Exemptions 6 and 7(C), the Supreme Court has said that the relevant public interest to be balanced against the privacy interest is “the preservation of the basic purpose of the Freedom of Information Act ‘to open agency action to the light of public scrutiny’” (*Dep’t of Air Force v. Rose*, 426 U.S. 352, 372 (1976)).

Redaction: Process used by agencies to delete or black out exempted information from records that must otherwise be released under the FOIA.

Representative of the News Media: Category of requester that is entitled to pay reduced fees (duplication costs only) for FOIA request processing, defined in the FOIA as “[a]ny person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience” (5 U.S.C. § 552(a)(4)(A)(ii)).

Segregable: Under the FOIA, agencies are required to release all segregable, nonexempt information within a document. This “segregability requirement” prevents agencies from withholding entire documents if only a portion is exempt from release. Agencies are not required to segregate exempt information when doing so would leave no comprehensible information or where the exempt and the nonexempt information is “inextricably intertwined.”

Statute of Limitations: A time limit for suing in a civil case based on the date when the claim first arose. Under the statute of limitations, FOIA cases must be filed within six years after the agency’s decision on the FOIA request or the date when administrative remedies were exhausted if the agency has not acted on the request.

Trade Secret: Some courts have cited a broad definition covering virtually any business information that provides a competitive advantage. But the DC Circuit Court of Appeals has announced a narrower definition—“a secret, commercially valuable plan, formula, process, or device that is used for the making, preparing, compounding, or processing of trade commodities and that can be said to be the end product of either innovation or substantial effort” (*Pub. Citizen Health Research Group v. FDA*, 704 F.2d 1280, 1288 (D.C. Cir. 1983)).

Unusual Circumstances: Basis on which agencies can claim a ten-day extension beyond the twenty business day processing deadline, including a voluminous request or the need to consult with other offices or agencies about the request.

Work Product Privilege: An evidentiary privilege, incorporated into FOIA Exemption 5, which protects from disclosure records prepared by an attorney in anticipation of or for the purpose of litigation. To withhold information under the FOIA, an agency must show that the record was prepared in anticipation of a specific lawsuit, by an attorney representing the government.

Federal Agencies Subject to the FOIA

FEDERAL DEPARTMENTS

Department of Agriculture
Department of Commerce
Department of Defense
Department of Education
Department of Energy
Department of Health and Human Services
Department of Homeland Security
Department of Housing and Urban Development
Department of the Interior
Department of Justice
Department of Labor
Department of State
Department of Transportation
Department of the Treasury
Department of Veterans Affairs

FEDERAL AGENCIES

Agency for International Development
American Battle Monuments Commission
Amtrak (National Railroad Passenger Corporation)
Broadcasting Board of Governors
Central Intelligence Agency
Chemical Safety and Hazard Investigation Board
Commission on Civil Rights
Committee for Purchase From People Who Are Blind or Severely Disabled
Commodity Futures Trading Commission
Consumer Product Safety Commission
Corporation for National Service
Court Services and Offender Supervision Agency
Defense Nuclear Facilities Safety Board
Environmental Protection Agency
Equal Employment Opportunity Commission
Executive Office of the President
 Council on Environmental Quality
 Office of Administration (in dispute)
 Office of Management and Budget
 Office of National Drug Control Policy
 Office of Science and Technology Policy

Office of the United States Trade Representative
Export-Import Bank
Farm Credit Administration
Farm Credit System Insurance Corporation
Federal Communications Commission
Federal Deposit Insurance Corporation
Federal Election Commission
Federal Energy Regulatory Commission
Federal Housing Finance Board
Federal Labor Relations Authority
Federal Maritime Commission
Federal Mediation and Conciliation Service
Federal Mine Safety and Health Review Commission
Federal Open Market Committee
Federal Reserve System
Federal Trade Commission
General Services Administration
Institute of Museum and Library Services
Inter-American Foundation
Legal Services Corporation
Merit Systems Protection Board
Millennium Challenge Corporation
National Aeronautics and Space Administration
National Archives and Records Administration
National Capital Planning Commission
National Credit Union Administration
National Endowment for the Arts
National Endowment for the Humanities
National Indian Gaming Commission
National Labor Relations Board
National Mediation Board
National Science Foundation
National Transportation Safety Board
Nuclear Regulatory Commission
Occupational Safety and Health Review Commission
Office of the Director of National Intelligence
Office of Federal Housing Enterprise Oversight
Office of Government Ethics
Office of Personnel Management
Office of Special Counsel
Overseas Private Investment Corporation
Peace Corps
Pension Benefit Guaranty Corporation
Postal Rate Commission
Railroad Retirement Board
Securities and Exchange Commission
Selective Service System
Small Business Administration

Social Security Administration
Surface Transportation Board
Tennessee Valley Authority
United States Copyright Office
United States International Boundary and Water Commission
United States International Trade Commission
United States Postal Service
United States Trade and Development Agency

Sample Request Letters

SAMPLE FOIA REQUEST LETTER

Agency Head [or Freedom of Information Act Officer]
Name of Agency
Address of Agency
City, State, Zip Code

Re: Freedom of Information Act Request

Dear _____:

This is a request under the Freedom of Information Act. I hereby request copies of the following records [or all records containing the following information]: [IDENTIFY RECORDS OR INFORMATION]

[ATTACH SUPPORTING DOCUMENTS]

As the FOIA requires, please release all reasonably segregable nonexempt portions of documents. [INCLUDE ARGUMENTS FOR RELEASE, IF APPLICABLE.]

In order to help to determine my status to assess fees, you should know that I am:

[INSERT REQUESTER DESCRIPTION, for example:

- an individual seeking information for personal use and not for commercial use.
- a representative of the news media affiliated with the _____ newspaper/magazine/television station/Web site/etc., and this request is made as part of news gathering activity and not for commercial use.
- affiliated with an educational or noncommercial scientific institution, and this request is made for a scholarly or scientific purpose and not for commercial use.
- affiliated with _____ corporation and seeking information for the company's business.]

[Optional] I request a waiver of all fees for this request. Disclosure of the requested information to me is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in my commercial interest. [Include a specific explanation.]

I am willing to pay fees for this request up to a maximum of \$ _____. If you estimate that the fees will exceed this limit, please inform me before processing my request.

If you have any questions regarding this request, please contact me at [PHONE and/or E-MAIL]. I look forward to receiving your response within the twenty day statutory time period. Thank you for your consideration of this request.

Sincerely,

SAMPLE MDR REQUEST LETTER

Agency Head [or MDR Officer]
Name of Agency
Address of Agency
City, State, Zip Code

Re: Mandatory Declassification Review Request

Dear _____:

This is a request for a mandatory declassification review, under the terms of Executive Order 12958, as amended, of the following:

[IDENTIFY RECORDS OR INFORMATION]

If you regard these documents as potentially exempt from disclosure requirements, I request that you nonetheless exercise your discretion to disclose them. Please release all reasonably segregable nonexempt portions of documents. Furthermore, to permit me to reach an intelligent and informed decision whether or not to file an administrative appeal of any denied material please describe any withheld portions and explain the basis for your claims.

If you have any questions regarding the identity of these records, their location, the scope of the request or any other matters, please contact me at: [insert phone number or e-mail].

I look forward to receiving your response.

Sincerely,

How to Read Agency Documents

Government documents can provide a wealth of information on the types of records an agency maintains, how an agency is organized, how communications are routed through an agency, and the existence of other documents to request under the FOIA. It is useful to learn how to read government documents in order to identify these types of clues. Below are three examples: a Department of State cable, a Department of Defense memorandum, and a Defense Intelligence Agency cable.

DEPARTMENT OF STATE CABLE

SECRET

1 UNCLASSIFIED

C25

3 PAGE 01 ISLAMA 06752 01 OF 02 281200Z
ACTION SS-01

2 RELEASED IN PART
B1, 1.4(B), 1.4(D)

INFO LOG-00 ADS-00 SSO-01 /002 W
-----264572 281201Z /38

5 O 281200Z MAR 90
FM AMEMBASSY ISLAMABAD
TO SECSTATE WASHDC IMMEDIATE 2175
INFO AMEMBASSY LONDON T51
AMEMBASSY MOSCOW
AMEMBASSY RIQYADH
AMCONSUL PESHAWAR

4

S E C R E T SECTION 01 OF 02 ISLAMAQAD 06752

7 EXDIS KHQYBER

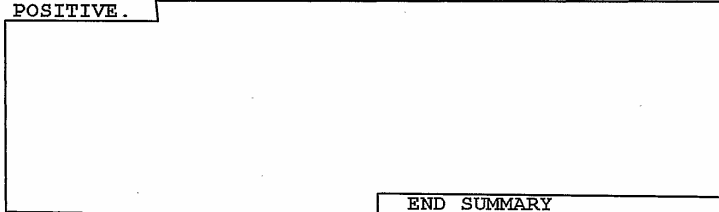
6 DECAPTIONED

E.O. 12356: DECL:OADR
TAGS: PREL, AF, PK, US, US
SUBJECT: BRIEFING PRESIDENT ISHAQ ON U.S.-SOVIET
Q
- EXPERTS TALKS

9

8 REF: (A) STATE 95642 (B) PESHAWAR 571

- 1. S - ENTIRE TEXT
- 2. SUMMARY: THE REACTION TO PRESIDENT ISHAQ MARCH 26 TO A BRIEFING ON THE QHELSINKI TALKS WAS POSITIVE.



END SUMMARY

SECRET

SECRET

PAGE 02 ISLAMA 06752 01 OF 02 281200Z

3. AMBASSADORS OAKLEY AND TOMSEN, ACCOMPANIED BY
POLCOUNSELOR, MET MARCH 26 WITH PRESIDENT GHULAQM
ISHAQ KHAN TO BRIEF HIM ON THE EXPERTS TALKS IN

UNITED STATES DEPARTMENT OF STATE
REVIEW AUTHORITY: CHARLES L DARIS
DATE/CASE ID: 19 APR 2005 200403874

UNCLASSIFIED

B1

- 1 “Unclassified” indicates the document in this form (with excisions) has been declassified and cleared for public release.
- 2 “Released in Part” indicates part of the document has been approved for release to the public. However, part remains withheld from public disclosure based on the classification categories in EO 12958, as amended.
- 3 “Islama 06752” is the cable number of the document. It indicates the cable was sent from the American Embassy in Islamabad, Pakistan.
- 4 Cable distribution list—This cable was sent from the American Embassy in Islamabad (“Fm Amembassy Islamabad”) to the Secretary of State (“To Secstate Washdc”) for immediate distribution. “Info” indicates that copies were sent to the embassies or consulates in London, Moscow, Riyadh, and Peshawar.
- 5 “281200Z Mar 90” indicates the date and time of the creation of the document, this is known as the cable's “date-time group,” or DTG. Standard format lists the date and time of processing in Zulu time (GMT), indicated by the Z at the end of the date-time sequence, followed by the month in tri-letter abbreviation and the two-digit year. This document was created 12:00 p.m. GMT March 28, 1990.
- 6 “Decaptioned” indicates the strict distribution restrictions initially placed on the EXDIS document (see below) have been lifted. The marking of “Decaptioned” indicates the document is currently available for wider distribution even though it was initially highly restricted.
- 7 “EXDIS” indicates "exclusive distribution to officers with essential need to know." This caption limits distribution to senior officials, and is used for highly sensitive cables sent between the White House, the Secretary of State, Deputy Secretary, under secretaries and chiefs of mission.
- 8 “REF” stands for “reference.” These are the numbers for any cables referred to in this document. In this instance, there are two such cables (From the State Department, No. 95642, and from the American Consulate in Peshawar, No. 571).
- 9 “TAGS” stands for “Traffic Analysis by Geography and Subject.” Used judiciously, these abbreviations can be a very useful means of identifying cables that are relevant to your research.

DEPARTMENT OF DEFENSE MEMORANDUM

DECLASSIFIED

Authority NND969057
By K.C. NARR Date 12/30/88

TOP SECRET

SENSITIVE 7107882

THE SECRETARY OF DEFENSE
WASHINGTON, D.C. 20301

5/25/71
25 MAY 1971

COPIES TO:

- S
- U
- J
- PM
- EUR
- S/PC
- S/S
- S/S-S

1
2
3
Honorable Henry A. Kissinger
Assistant to the President for
National Security Affairs
Executive Office of the President
Washington, D.C. 20501

NODIS

NODIS REVIEW

Cat. A - Caption removed;
transferred to O/FADRC

Cat. B - Transferred to O/FADRC
with additional access
controlled by S/S

Cat. C - Caption and custody
retained by S/S

Reviewed by: [Signature]
Date: 7/31 1978

Dear Henry:

This is in response to your letter of April 28, in which you expressed an interest in French reactions to Dr. Foster's meeting with them regarding U.S. assistance to their ballistic missile programs.

7 8 0 0 4 6 0 1 9 4 0

As a follow-up to his letter of April 20, Dr. Foster met with M. Blancard in Paris on May 12. From all appearances, the meeting went exceedingly well. Dr. Foster restated the President's decision to provide assistance, outlined the type of assistance we would be willing to furnish, stated there would be limits, indicated their nature, and emphasized that our help was to be directed towards helping fix their present systems, so they work in a reliable manner and achieve their design objectives, rather than to help make major performance advances in these systems or help develop next generation systems with significantly improved performance characteristics.

Dr. Foster also noted the overall sensitivity of the matter, calling attention to the security classification and close-hold basis assigned it in the United States, and requested the French accord it similar treatment.

2
In order to initiate the exchange it was suggested that the next phase consist of a visit to France, in early June, by a team from the U.S., led by a member of Dr. Foster's staff, accompanied by top level personnel from both our Polaris and Minuteman program offices and a member of G. Warren Nutter's staff. The purpose of this visit would be to learn more of the technical details of the French problems, work out tentative arrangements for assistance in their solution, and to write a series of guidelines and ground rules to

REF 12 FR
REF 12 NS
MICROFILMED BY S/S

5

Sec Def Cont Mr. X-

2497

NODIS

6

OSD Reg No. 1

BS.

TOP SECRET

EXCLUDED FROM AUTOMATIC
REGRADING; DOD DIR 5200.10
DOES NOT APPLY

7

SENSITIVE

- 1 Distribution of the document at the Department of State. This is the list of bureaus within the State Department that received a copy of the document.
- 2 NODIS indicates “messages of highest sensitivity” at the Secretary of State level. This caption limits distribution to the intended recipient only, unless permission is given by the executive secretary for wider distribution.
- 3 “NODIS review, caption removed” indicates that the document was downgraded on July 31, 1978. However, the document was still classified as “Top Secret” until it was reviewed and released under either the FOIA or MDR.
- 4 Department of State filing information. DEF indicates that this is a document about defense issues. “12” indicates it deals with nuclear issues, and “FR” indicates it deals with France. XR indicates it is a cross reference with the document number DEF 12 US.
- 5 Department of Defense Top Secret tracking number.
- 6 This “OSD Rcy No. 1” indicates that this document is copy #1 of a limited set of original copies produced by the Office of the Secretary of Defense.
- 7 Indicates this document is exempt from automatic declassification review, which means it would not automatically be reviewed for release after twenty-five years.

DEFENSE INTELLIGENCE AGENCY CABLE

1 - ~~SECRET~~

DOCUMENT_ID: 178798311
INQNO: DOC44D 00192700
DOCNO: [REDACTED]
PRODUCER: JCS
SOURCE: DODIR
DOCTYPE: [REDACTED]
DOR: 19971224
TOR: 071529
DOCPREC: R
ORIGDATE: 199712241154
MHENO: 97 0085494
DOCCLASS: ~~S~~

HEADER
RR RUEAIIA
DE RUEHBO #2080/01 3581154
ZNY ~~SECRET~~
R 241154Z DEC 97
FM [REDACTED]
TO RUEKJCS/DIA WASHDC [REDACTED]
INFO RUMIAAA/USCINCSO MIAMI FL [REDACTED]
RUEHC/SECSTATE WASHDC [REDACTED]
RUEKJCS/SECDEF WASHDC [REDACTED]
RUEAIIA/CIA WASHDC [REDACTED]

3

2

4

(b)(2),(b)(3):
10 USC 424 9

BT
CONTROLS
~~SECRET~~ [REDACTED] 012080
~~SECRET~~

SERIAL: (U) IIR [REDACTED]

TEXT
COUNTRY: (U) COLOMBIA (CO); PANAMA (PM).

//IPSP: (U) [REDACTED]

COMBINE: COMPLETE 5

6

SUBJ: IIR [REDACTED] CASHIERED COLONEL TALKS FREELY
ABOUT THE ARMY HE LEFT BEHIND (LASER STRIKE) (U)

7

WARNING: (U) THIS IS AN INFORMATION REPORT, NOT
FINALLY EVALUATED INTELLIGENCE. REPORT CLASSIFIED
~~SECRET~~

8

DOI: (U) 971117.

DEPARTMENT OF DEFENSE

~~SECRET~~

- 1 The document was classified “Secret” before declassification. The word “Secret” has been crossed out to indicate that it has been declassified.
- 2 The date and time of transmission. This document was transmitted on December 24, 1997, at 11:54 GMT.
- 3 The origin of the document has been excised.
- 4 The report was transmitted to the DIA in Washington, but copies were also sent to several other offices, some of which are classified.
- 5 “IIR”—Intelligence Information Report. Serial Number—The IIR number is normally withheld under FOIA exemption (b)(2). A typical IIR number consists of ten digits.
- 6 The subject line is the de facto title of the document.
- 7 This document contains raw, unevaluated intelligence
- 8 “DOI”—Date of Information. The information in this cable was current as of the date given—in this case, November 17, 1997.
- 9 These numbers refer to the exemptions that justify further withholding of the information blacked out in the document.

Additional Resources

LAWS AND EXECUTIVE ORDERS

The Freedom of Information Act, 5 U.S.C. § 552 (see appendix 6 for text)
<http://www.usdoj.gov/oip/amended-foia-redlined.pdf>

The Privacy Act of 1974, 5 U.S.C. § 552a
<http://www.usdoj.gov/oip/privstat.htm>

The Presidential Records Act (PRA) of 1978, 44 U.S.C. § 2201-2207
<http://www.archives.gov/presidential-libraries/laws/1978-act.html>

Executive Order 12958 (as amended) on Classified National Security Information
<http://www.archives.gov/isoo/policy-documents/eo-12958-amendment.html>

Executive Order 13392 on Improving Agency Disclosure of Information
<http://www.whitehouse.gov/news/releases/2005/12/print/20051214-4.html>

FOIA Legislative History, from the National Security Archive
<http://www.gwu.edu/~nsarchiv/nsa/foialeghistory/legistfoia.htm>

AGENCY INFORMATION

Links to Federal Agencies' FOIA Web Sites
http://www.usdoj.gov/oip/other_age.htm

Principal FOIA Contacts at Federal Agencies
<http://www.usdoj.gov/oip/foiacontacts.htm>

A – Z Index of US Government Departments and Agencies
http://www.usa.gov/Agencies/Federal/All_Agencies/index.shtml

The US Government Manual—Official handbook of the Federal Government, which provides comprehensive information on legislative, judicial, and executive branch agencies.
<http://www.gpoaccess.gov/gmanual/index.html>

FOIA RESOURCES

Governmental Resources

Department of Justice FOIA Guide (March 2007)—An extensive guide to the Act's exemptions and procedural requirements.

http://www.usdoj.gov/oip/foia_guide07.htm

Federal Agencies' Annual FOIA Reports to Congress

http://www.usdoj.gov/oip/04_6.html

Your Right to Federal Records—A 2006 publication of the Department of Justice and the General Services Administration.

http://www.pueblo.gsa.gov/cic_text/fed_prog/foia/foia.htm

A Citizen's Guide to the FOIA—A 2005 publication of the House Committee on Government Reform.

<http://www.fas.org/sgp/foia/citizen.html>

FOIA Post—A Web-based newsletter published by the Department of Justice, containing FOIA information and guidance for federal agencies.

<http://www.usdoj.gov/oip/foiapost/mainpage.htm>

Nongovernmental Resources

Access Reports—Newsletter publication that covers freedom of information and privacy issues, tracking policy trends while summarizing and analyzing court decisions, legislation (federal and state), regulations, and agency guidance.

<http://www.accessreports.com/>

Litigation Under the Federal Open Government Laws 2008, Harry A. Hammit et al, (Electronic Privacy Information Center, 2008).

How To Use The Federal FOI Act, 9th Edition—From the Reporters Committee for Freedom of the Press, 2004.

<http://www.rcfp.org/foiact/>

Federal FOI Act Letter Generator

http://www.rcfp.org/foi_letter/generate.php

The Freedom of Information Act: A User's Guide—From Public Citizen, 2005.

<http://www.citizen.org/documents/FOIABrochureWEB.pdf>

Aids for Drafting FOIA Requests

http://www.citizen.org/litigation/free_info/foic_aids/index.cfm

Significant Judicial Decisions Interpreting the FOIA

http://www.citizen.org/litigation/free_info/foic_lr/foiacases/index.cfm

Resources for FOIA Legal Research on the Internet

http://www.citizen.org/litigation/free_info/foic_lr/index.cfm

National Freedom of Information Coalition (NFOIC)—A network of state FOIA advocates that awards grants, holds events, and provides state and federal FOIA resources.

<http://www.nfoic.org/>

Sunshine in Government Initiative—Coalition of media groups committed to promoting policies that ensure the government is accessible, accountable, and open.

<http://www.sunshineingovernment.org/>

Collaboration on Government Secrecy—Project based at the Washington College of Law of American University devoted to openness in government, which provides extensive resources on FOIA legislation, litigation, and news.

<http://www.wcl.american.edu/lawandgov/cgs/>

Sunshine Week—National initiative led by the American Society of Newspaper Editors to open a dialogue about the importance of open government and freedom of information. Web site provides information about annual events as well as FOIA resources.

<http://www.sunshineweek.org/>

Secrecy News—A publication of the Federation of American Scientists' Project on Government Secrecy which provides informal coverage of new developments in secrecy, security, and intelligence policies, as well as links to new acquisitions on its Web site.

E-mail newsletter – <http://www.fas.org/sgp/news/secrecy/index.html>

Blog format – <http://www.fas.org/blog/secrecy/>

FOI Listserv—E-mail discussion group focusing on access to public records, closure of governmental meetings, trends in legislation, and other issues about the public's access to government records and meetings.

<http://www.nfoic.org/resources/foil.html>

MDR AND CLASSIFICATION RESOURCES

Interagency Security Classification Appeals Panel—The Interagency Security Classification Appeals Panel (ISCAP) provides the public and users of the classification system with a forum for further review of classification decisions and handles appeals from MDR requests.

<http://www.archives.gov/isoo/oversight-groups/iscap/index.html>

Information Security Oversight Office—The Information Security Oversight Office (ISOO) is a component of NARA that is responsible to the president for policy and oversight of the government-wide security classification system and the National Industrial Security Program.

<http://www.archives.gov/isoo/>

GENERAL GOVERNMENT INFORMATION RESOURCES

Federal Register—The *Federal Register* is the official daily publication containing rules, proposed rules, and notices of federal agencies and organizations, as well as executive orders and other presidential documents.
<http://www.gpoaccess.gov/fr/index.html>

National Archives and Records Administration—Independent federal agency charged with preserving and providing public access to government and historical records, including those from executive branch agencies as well as Congress and the courts.
<http://www.archives.gov/>

Government and Public Libraries—List of national, federal agency, and local libraries as well as online library databases operated by the US government.
http://www.usa.gov/Topics/Reference_Shelf/Libraries.shtml

National Security Archive—An independent nongovernmental research institute and library located at The George Washington University, the Archive collects and publishes declassified documents obtained through the Freedom of Information Act.
<http://www.nsarchive.org>

Project on Government Secrecy, Federation of American Scientists—Project working to challenge excessive government secrecy and promote public oversight by publishing declassified records and extensive resources about government secrecy.
<http://www.fas.org/sgp/index.html>

governmentdocs.org—This site allows users to browse, search, and review hundreds of thousands of pages of government documents acquired through FOIA and other public disclosure laws.
<http://governmentdocs.org/>

Governmentattic.org—Provides electronic copies of hundreds of interesting federal government documents obtained under the Freedom of Information Act.
<http://www.governmentattic.org>

The Memory Hole—A Web site dedicated to preserving material that is in danger of being lost, is hard to find, or is not widely known, including government files, court documents, congressional reports, and other governmental and non-governmental documents.
<http://www.thememoryhole.org/>

The Freedom of Information Act

5 U.S.C. § 552

§ 552. Public information; agency rules, opinions, orders, records, and proceedings

(a) Each agency shall make available to the public information as follows:

(1) Each agency shall separately state and currently publish in the Federal Register for the guidance of the public—

(A) descriptions of its central and field organization and the established places at which, the employees (and in the case of a uniformed service, the members) from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions;

(B) statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(C) rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

(D) substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency; and

(E) each amendment, revision, or repeal of the foregoing.

Except to the extent that a person has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by, a matter required to be published in the Federal Register and not so published. For the purpose of this paragraph, matter reasonably available to the class of persons affected thereby is deemed published in the Federal Register when incorporated by reference therein with the approval of the Director of the Federal Register.

(2) Each agency, in accordance with published rules, shall make available for public inspection and copying—

(A) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(B) those statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register;

(C) administrative staff manuals and instructions to staff that affect a member of the public;

(D) copies of all records, regardless of form or format, which have been released to any person under paragraph (3) and which, because of the nature of their subject matter, the agency determines have become or are likely to become the subject of subsequent requests for substantially the same records; and

(E) a general index of the records referred to under subparagraph (D);

unless the materials are promptly published and copies offered for sale. For records created on or after November 1, 1996, within one year after such date, each agency shall make such records available, including by computer telecommunications or, if computer telecommunications means have not been established by the agency, by other electronic means. To the extent required to prevent a clearly unwarranted invasion of personal privacy, an agency may delete identifying details when it makes available or publishes an opinion, statement of policy, interpretation, staff manual, instruction, or copies of records referred to in subparagraph (D). However, in each case the justification for the deletion shall be explained fully in writing, and the extent of such deletion shall be indicated on the portion of the record which is made available or published, unless including that indication would harm an interest protected by the exemption in subsection (b) under which the deletion is made. If technically feasible, the extent of the deletion shall be indicated at the place in the record where the deletion was made. Each agency shall also maintain and make available for public inspection and copying current indexes providing identifying information for the public as to any matter issued, adopted, or promulgated after July 4, 1967, and required by this paragraph to be made available or published. Each agency shall promptly publish, quarterly or more frequently, and distribute (by sale or otherwise) copies of each index or supplements thereto unless it determines by order published in the Federal Register that the publication would be unnecessary and impracticable, in which case the agency shall nonetheless provide copies of an index on request at a cost not to exceed the direct cost of duplication. Each agency shall make the index referred to in subparagraph (E) available by computer telecommunications by December 31, 1999. A final order, opinion, statement of policy, interpretation, or staff manual or instruction that affects a member of the public may be relied on, used, or cited as precedent by an agency against a party other than an agency only if—

(i) it has been indexed and either made available or published as provided by this paragraph; or

(ii) the party has actual and timely notice of the terms thereof.

(3)(A) Except with respect to the records made available under paragraphs (1) and (2) of this subsection, and except as provided in subparagraph (E), each agency, upon any request for records which (i) reasonably describes such records and (ii) is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed, shall make the records promptly available to any person.

(B) In making any record available to a person under this paragraph, an agency shall provide the record in any form or format requested by the person if the record is readily reproducible by the agency in that form or format. Each agency shall make reasonable efforts to maintain its records in forms or formats that are reproducible for purposes of this section.

(C) In responding under this paragraph to a request for records, an agency shall make reasonable efforts to search for the records in electronic form or format, except when

such efforts would significantly interfere with the operation of the agency's automated information system.

(D) For purposes of this paragraph, the term "search" means to review, manually or by automated means, agency records for the purpose of locating those records which are responsive to a request.

(E) An agency, or part of an agency, that is an element of the intelligence community (as that term is defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4))) shall not make any record available under this paragraph to—

(i) any government entity, other than a State, territory, commonwealth, or district of the United States, or any subdivision thereof; or

(ii) a representative of a government entity described in clause (i).

(4)(A)(i) In order to carry out the provisions of this section, each agency shall promulgate regulations, pursuant to notice and receipt of public comment, specifying the schedule of fees applicable to the processing of requests under this section and establishing procedures and guidelines for determining when such fees should be waived or reduced. Such schedule shall conform to the guidelines which shall be promulgated, pursuant to notice and receipt of public comment, by the Director of the Office of Management and Budget and which shall provide for a uniform schedule of fees for all agencies.

(ii) Such agency regulations shall provide that—

(I) fees shall be limited to reasonable standard charges for document search, duplication, and review, when records are requested for commercial use;

(II) fees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by an educational or noncommercial scientific institution, whose purpose is scholarly or scientific research; or a representative of the news media; and

(III) for any request not described in (I) or (II), fees shall be limited to reasonable standard charges for document search and duplication.

In this clause, the term 'a representative of the news media' means any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. In this clause, the term 'news' means information that is about current events or that would be of current interest to the public. Examples of newsmedia entities are television or radio stations broadcasting to the public at large and publishers of periodicals (but only if such entities qualify as disseminators of 'news') who make their products available for purchase by or subscription by or free distribution to the general public. These examples are not all-inclusive. Moreover, as methods of news delivery evolve (for example, the adoption of the electronic dissemination of newspapers through telecommunications services), such alternative media shall be considered to be news-media entities. A freelance journalist shall be

regarded as working for a news-media entity if the journalist can demonstrate a solid basis for expecting publication through that entity, whether or not the journalist is actually employed by the entity. A publication contract would present a solid basis for such an expectation; the Government may also consider the past publication record of the requester in making such a determination.

(iii) Documents shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(iv) Fee schedules shall provide for the recovery of only the direct costs of search, duplication, or review. Review costs shall include only the direct costs incurred during the initial examination of a document for the purposes of determining whether the documents must be disclosed under this section and for the purposes of withholding any portions exempt from disclosure under this section. Review costs may not include any costs incurred in resolving issues of law or policy that may be raised in the course of processing a request under this section. No fee may be charged by any agency under this section—

(I) if the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee; or

(II) for any request described in clause (ii)(II) or (III) of this subparagraph for the first two hours of search time or for the first one hundred pages of duplication.

(v) No agency may require advance payment of any fee unless the requester has previously failed to pay fees in a timely fashion, or the agency has determined that the fee will exceed \$250.

(vi) Nothing in this subparagraph shall supersede fees chargeable under a statute specifically providing for setting the level of fees for particular types of records.

(vii) In any action by a requester regarding the waiver of fees under this section, the court shall determine the matter de novo: Provided, That the court's review of the matter shall be limited to the record before the agency.

(viii) An agency shall not assess search fees (or in the case of a requester described under clause (ii)(II), duplication fees) under this subparagraph if the agency fails to comply with any time limit under paragraph (6), if no unusual or exceptional circumstances (as those terms are defined for purposes of paragraphs (6)(B) and (C), respectively) apply to the processing of the request. [Effective December 31, 2008]

(B) On complaint, the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records

improperly withheld from the complainant. In such a case the court shall determine the matter de novo, and may examine the contents of such agency records in camera to determine whether such records or any part thereof shall be withheld under any of the exemptions set forth in subsection (b) of this section, and the burden is on the agency to sustain its action. In addition to any other matters to which a court accords substantial weight, a court shall accord substantial weight to an affidavit of an agency concerning the agency's determination as to technical feasibility under paragraph (2)(C) and subsection (b) and reproducibility under paragraph (3)(B).

(C) Notwithstanding any other provision of law, the defendant shall serve an answer or otherwise plead to any complaint made under this subsection within thirty days after service upon the defendant of the pleading in which such complaint is made, unless the court otherwise directs for good cause is shown.

[(D) Repealed. Pub. L. 98-620, title IV, Sec. 402(2), Nov. 8, 1984, 98 Stat. 3357.]

(E)(i) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this section in which the complainant has substantially prevailed.

(ii) For purposes of this subparagraph, a complainant has substantially prevailed if the complainant has obtained relief through either—

(I) a judicial order, or an enforceable written agreement or consent decree; or

(II) a voluntary or unilateral change in position by the agency, if the complainant's claim is not insubstantial.

(F)(i) Whenever the court orders the production of any agency records improperly withheld from the complainant and assesses against the United States reasonable attorney fees and other litigation costs, and the court additionally issues a written finding that the circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously with respect to the withholding, the Special Counsel shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the officer or employee who was primarily responsible for the withholding. The Special Counsel, after investigation and consideration of the evidence submitted, shall submit his findings and recommendations to the administrative authority of the agency concerned and shall send copies of the findings and recommendations to the officer or employee or his representative. The administrative authority shall take the corrective action that the Special Counsel recommends.

(ii) The Attorney General shall—

(I) notify the Special Counsel of each civil action described under the first sentence of clause (i); and

(II) annually submit a report to Congress on the number of such civil actions in the preceding year.

(iii) The Special Counsel shall annually submit a report to Congress on the actions taken by the Special Counsel under clause (i).

(G) In the event of noncompliance with the order of the court, the district court may punish for contempt the responsible employee, and in the case of a uniformed service, the responsible member.

(5) Each agency having more than one member shall maintain and make available for public inspection a record of the final votes of each member in every agency proceeding.

(6)(A) Each agency, upon any request for records made under paragraph (1), (2), or (3) of this subsection, shall—

(i) determine within 20 days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of any such request whether to comply with such request and shall immediately notify the person making such request of such determination and the reasons therefor, and of the right of such person to appeal to the head of the agency any adverse determination; and

(ii) make a determination with respect to any appeal within twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such appeal. If on appeal the denial of the request for records is in whole or in part upheld, the agency shall notify the person making such request of the provisions for judicial review of that determination under paragraph (4) of this subsection.

The 20-day period under clause (i) shall commence on the date on which the request is first received by the appropriate component of the agency, but in any event not later than ten days after the request is first received by any component of the agency that is designated in the agency's regulations under this section to receive requests under this section. The 20-day period shall not be tolled by the agency except—

(I) that the agency may make one request to the requester for information and toll the 20-day period while it is awaiting such information that it has reasonably requested from the requester under this section; or

(II) if necessary to clarify with the requester issues regarding fee assessment. In either case, the agency's receipt of the requester's response to the agency's request for information or clarification ends the tolling period. [Effective December 31, 2008]

(B)(i) In unusual circumstances as specified in this subparagraph, the time limits prescribed in either clause (i) or clause (ii) of subparagraph (A) may be extended by written notice to the person making such request setting forth the unusual circumstances for such extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension for more than ten working days, except as provided in clause (ii) of this subparagraph.

(ii) With respect to a request for which a written notice under clause (i) extends the time limits prescribed under clause (i) of subparagraph (A), the agency shall

notify the person making the request if the request cannot be processed within the time limit specified in that clause and shall provide the person an opportunity to limit the scope of the request so that it may be processed within that time limit or an opportunity to arrange with the agency an alternative time frame for processing the request or a modified request. To aid the requester, each agency shall make available its FOIA Public Liaison, who shall assist in the resolution of any disputes between the requester and the agency. [Effective December 31, 2008]. Refusal by the person to reasonably modify the request or arrange such an alternative time frame shall be considered as a factor in determining whether exceptional circumstances exist for purposes of subparagraph (C).

(iii) As used in this subparagraph, "unusual circumstances" means, but only to the extent reasonably necessary to the proper processing of the particular requests—

(I) the need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(II) the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(III) the need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.

(iv) Each agency may promulgate regulations, pursuant to notice and receipt of public comment, providing for the aggregation of certain requests by the same requestor, or by a group of requestors acting in concert, if the agency reasonably believes that such requests actually constitute a single request, which would otherwise satisfy the unusual circumstances specified in this subparagraph, and the requests involve clearly related matters. Multiple requests involving unrelated matters shall not be aggregated.

(C)(i) Any person making a request to any agency for records under paragraph (1), (2), or (3) of this subsection shall be deemed to have exhausted his administrative remedies with respect to such request if the agency fails to comply with the applicable time limit provisions of this paragraph. If the Government can show exceptional circumstances exist and that the agency is exercising due diligence in responding to the request, the court may retain jurisdiction and allow the agency additional time to complete its review of the records. Upon any determination by an agency to comply with a request for records, the records shall be made promptly available to such person making such request. Any notification of denial of any request for records under this subsection shall set forth the names and titles or positions of each person responsible for the denial of such request.

(ii) For purposes of this subparagraph, the term "exceptional circumstances" does not include a delay that results from a predictable agency workload of

requests under this section, unless the agency demonstrates reasonable progress in reducing its backlog of pending requests.

(iii) Refusal by a person to reasonably modify the scope of a request or arrange an alternative time frame for processing a request (or a modified request) under clause (ii) after being given an opportunity to do so by the agency to whom the person made the request shall be considered as a factor in determining whether exceptional circumstances exist for purposes of this subparagraph.

(D)(i) Each agency may promulgate regulations, pursuant to notice and receipt of public comment, providing for multitrack processing of requests for records based on the amount of work or time (or both) involved in processing requests.

(ii) Regulations under this subparagraph may provide a person making a request that does not qualify for the fastest multitrack processing an opportunity to limit the scope of the request in order to qualify for faster processing.

(iii) This subparagraph shall not be considered to affect the requirement under subparagraph (C) to exercise due diligence.

(E)(i) Each agency shall promulgate regulations, pursuant to notice and receipt of public comment, providing for expedited processing of requests for records—

(I) in cases in which the person requesting the records demonstrates a compelling need; and

(II) in other cases determined by the agency.

(ii) Notwithstanding clause (i), regulations under this subparagraph must ensure—

(I) that a determination of whether to provide expedited processing shall be made, and notice of the determination shall be provided to the person making the request, within 10 days after the date of the request; and

(II) expeditious consideration of administrative appeals of such determinations of whether to provide expedited processing.

(iii) An agency shall process as soon as practicable any request for records to which the agency has granted expedited processing under this subparagraph. Agency action to deny or affirm denial of a request for expedited processing pursuant to this subparagraph, and failure by an agency to respond in a timely manner to such a request shall be subject to judicial review under paragraph (4), except that the judicial review shall be based on the record before the agency at the time of the determination.

(iv) A district court of the United States shall not have jurisdiction to review an agency denial of expedited processing of a request for records after the agency has provided a complete response to the request.

(v) For purposes of this subparagraph, the term "compelling need" means—

(I) that a failure to obtain requested records on an expedited basis under this paragraph could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(II) with respect to a request made by a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal Government activity.

(vi) A demonstration of a compelling need by a person making a request for expedited processing shall be made by a statement certified by such person to be true and correct to the best of such person's knowledge and belief.

(F) In denying a request for records, in whole or in part, an agency shall make a reasonable effort to estimate the volume of any requested matter the provision of which is denied, and shall provide any such estimate to the person making the request, unless providing such estimate would harm an interest protected by the exemption in subsection (b) pursuant to which the denial is made.

(7) Each agency shall—

(A) establish a system to assign an individualized tracking number for each request received that will take longer than ten days to process and provide to each person making a request the tracking number assigned to the request; and

(B) establish a telephone line or Internet service that provides information about the status of a request to the person making the request using the assigned tracking number, including—

(i) the date on which the agency originally received the request; and

(ii) an estimated date on which the agency will complete action on the request.
[Effective December 31, 2008]

(b) This section does not apply to matters that are—

(1)(A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order;

(2) related solely to the internal personnel rules and practices of an agency;

(3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual;

(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) geological and geophysical information and data, including maps, concerning wells.

Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection. The amount of information deleted, and the exemption under which the deletion is made, shall be indicated on the released portion of the record, unless including that indication would harm an interest protected by the exemption in this subsection under which the deletion is made. If technically feasible, the amount of the information deleted, and the exemption under which the deletion is made, shall be indicated at the place in the record where such deletion is made.

(c)(1) Whenever a request is made which involves access to records described in subsection (b)(7)(A) and—

(A) the investigation or proceeding involves a possible violation of criminal law; and

(B) there is reason to believe that (i) the subject of the investigation or proceeding is not aware of its pendency, and (ii) disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings, the agency may, during only such time as that circumstance continues, treat the records as not subject to the requirements of this section.

(2) Whenever informant records maintained by a criminal law enforcement agency under an informant's name or personal identifier are requested by a third party according to the informant's name or personal identifier, the agency may treat the records as not subject to the requirements of this section unless the informant's status as an informant has been officially confirmed.

(3) Whenever a request is made which involves access to records maintained by the Federal Bureau of Investigation pertaining to foreign intelligence or counterintelligence, or international

terrorism, and the existence of the records is classified information as provided in subsection (b)(1), the Bureau may, as long as the existence of the records remains classified information, treat the records as not subject to the requirements of this section.

(d) This section does not authorize the withholding of information or limit the availability of records to the public, except as specifically stated in this section. This section is not authority to withhold information from Congress.

(e)(1) On or before February 1 of each year, each agency shall submit to the Attorney General of the United States a report which shall cover the preceding fiscal year and which shall include—

(A) the number of determinations made by the agency not to comply with requests for records made to such agency under subsection (a) and the reasons for each such determination;

(B)(i) the number of appeals made by persons under subsection (a)(6), the result of such appeals, and the reason for the action upon each appeal that results in a denial of information; and

(ii) a complete list of all statutes that the agency relies upon to authorize the agency to withhold information under subsection (b)(3), the number of occasions on which each statute was relied upon, a description of whether a court has upheld the decision of the agency to withhold information under each such statute, and a concise description of the scope of any information withheld;

(C) the number of requests for records pending before the agency as of September 30 of the preceding year, and the median and average number of days that such requests had been pending before the agency as of that date;

(D) the number of requests for records received by the agency and the number of requests which the agency processed;

(E) the median number of days taken by the agency to process different types of requests, based on the date on which the requests were received by the agency;

(F) the average number of days for the agency to respond to a request beginning on the date on which the request was received by the agency, the median number of days for the agency to respond to such requests, and the range in number of days for the agency to respond to such requests;

(G) based on the number of business days that have elapsed since each request was originally received by the agency—

(i) the number of requests for records to which the agency has responded with a determination within a period up to and including 20 days, and in 20-day increments up to and including 200 days;

(ii) the number of requests for records to which the agency has responded with a determination within a period greater than 200 days and less than 301 days;

(iii) the number of requests for records to which the agency has responded with a determination within a period greater than 300 days and less than 401 days; and

(iv) the number of requests for records to which the agency has responded with a determination within a period greater than 400 days;

(H) the average number of days for the agency to provide the granted information beginning on the date on which the request was originally filed, the median number of days for the agency to provide the granted information, and the range in number of days for the agency to provide the granted information;

(I) the median and average number of days for the agency to respond to administrative appeals based on the date on which the appeals originally were received by the agency, the highest number of business days taken by the agency to respond to an administrative appeal, and the lowest number of business days taken by the agency to respond to an administrative appeal;

(J) data on the 10 active requests with the earliest filing dates pending at each agency, including the amount of time that has elapsed since each request was originally received by the agency;

(K) data on the 10 active administrative appeals with the earliest filing dates pending before the agency as of September 30 of the preceding year, including the number of business days that have elapsed since the requests were originally received by the agency;

(L) the number of expedited review requests that are granted and denied, the average and median number of days for adjudicating expedited review requests, and the number adjudicated within the required 10 days;

(M) the number of fee waiver requests that are granted and denied, and the average and median number of days for adjudicating fee waiver determinations;

(N) the total amount of fees collected by the agency for processing requests; and

(O) the number of full-time staff of the agency devoted to processing requests for records under this section, and the total amount expended by the agency for processing such requests.

(2) Information in each report submitted under paragraph (1) shall be expressed in terms of each principal component of the agency and for the agency overall.

(3) Each agency shall make each such report available to the public including by computer telecommunications, or if computer telecommunications means have not been established by the agency, by other electronic means. In addition, each agency shall make the raw statistical data used in its reports available electronically to the public upon request.

(4) The Attorney General of the United States shall make each report which has been made available by electronic means available at a single electronic access point. The Attorney General of the United States shall notify the Chairman and ranking minority member of the Committee on Government Reform and Oversight of the House of Representatives and the Chairman and

ranking minority member of the Committees on Governmental Affairs and the Judiciary of the Senate, no later than April 1 of the year in which each such report is issued, that such reports are available by electronic means.

(5) The Attorney General of the United States, in consultation with the Director of the Office of Management and Budget, shall develop reporting and performance guidelines in connection with reports required by this subsection by October 1, 1997, and may establish additional requirements for such reports as the Attorney General determines may be useful.

(6) The Attorney General of the United States shall submit an annual report on or before April 1 of each calendar year which shall include for the prior calendar year a listing of the number of cases arising under this section, the exemption involved in each case, the disposition of such case, and the cost, fees, and penalties assessed under subparagraphs (E), (F), and (G) of subsection (a)(4). Such report shall also include a description of the efforts undertaken by the Department of Justice to encourage agency compliance with this section.

(f) For purposes of this section, the term—

(1) "agency" as defined in section 551(1) of this title includes any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency; and

(2) 'record' and any other term used in this section in reference to information includes—

(A) any information that would be an agency record subject to the requirements of this section when maintained by an agency in any format, including an electronic format; and

(B) any information described under subparagraph (A) that is maintained for an agency by an entity under Government contract, for the purposes of records management.

(g) The head of each agency shall prepare and make publicly available upon request, reference material or a guide for requesting records or information from the agency, subject to the exemptions in subsection (b), including—

(1) an index of all major information systems of the agency;

(2) a description of major information and record locator systems maintained by the agency; and

(3) a handbook for obtaining various types and categories of public information from the agency pursuant to chapter 35 of title 44, and under this section.

(h)(1) There is established the Office of Government Information Services within the National Archives and Records Administration.

(2) The Office of Government Information Services shall—

(A) review policies and procedures of administrative agencies under this section;

(B) review compliance with this section by administrative agencies; and

(C) recommend policy changes to Congress and the President to improve the administration of this section.

(3) The Office of Government Information Services shall offer mediation services to resolve disputes between persons making requests under this section and administrative agencies as a non-exclusive alternative to litigation and, at the discretion of the Office, may issue advisory opinions if mediation has not resolved the dispute.

(i) The Government Accountability Office shall conduct audits of administrative agencies on the implementation of this section and issue reports detailing the results of such audits.

(j) Each agency shall designate a Chief FOIA Officer who shall be a senior official of such agency (at the Assistant Secretary or equivalent level).

(k) The Chief FOIA Officer of each agency shall, subject to the authority of the head of the agency—

(1) have agency-wide responsibility for efficient and appropriate compliance with this section;

(2) monitor implementation of this section throughout the agency and keep the head of the agency, the chief legal officer of the agency, and the Attorney General appropriately informed of the agency's performance in implementing this section;

(3) recommend to the head of the agency such adjustments to agency practices, policies, personnel, and funding as may be necessary to improve its implementation of this section;

(4) review and report to the Attorney General, through the head of the agency, at such times and in such formats as the Attorney General may direct, on the agency's performance in implementing this section;

(5) facilitate public understanding of the purposes of the statutory exemptions of this section by including concise descriptions of the exemptions in both the agency's handbook issued under subsection (g), and the agency's annual report on this section, and by providing an overview, where appropriate, of certain general categories of agency records to which those exemptions apply; and

(6) designate one or more FOIA Public Liaisons.

(l) FOIA Public Liaisons shall report to the agency Chief FOIA Officer and shall serve as supervisory officials to whom a requester under this section can raise concerns about the service the requester has received from the FOIA Requester Center, following an initial response from the FOIA Requester Center Staff. FOIA Public Liaisons shall be responsible for assisting in reducing delays, increasing transparency and understanding of the status of requests, and assisting in the resolution of disputes.

Executive Order 12958 (as amended)

Classified National Security Information

This order prescribes a uniform system for classifying, safeguarding, and declassifying national security information, including information relating to defense against transnational terrorism. Our democratic principles require that the American people be informed of the activities of their Government. Also, our Nations progress depends on the free flow of information. Nevertheless, throughout our history, the national defense has required that certain information be maintained in confidence in order to protect our citizens, our democratic institutions, our homeland security, and our interactions with foreign nations. Protecting information critical to our Nations security remains a priority.

NOW, THEREFORE, by the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

PART 1--ORIGINAL CLASSIFICATION

Sec. 1.1. Classification Standards. (a) Information may be originally classified under the terms of this order only if all of the following conditions are met:

- (1) an original classification authority is classifying the information;
- (2) the information is owned by, produced by or for, or is under the control of the United States Government;
- (3) the information falls within one or more of the categories of information listed in section 1.4 of this order; and
- (4) the original classification authority determines that the unauthorized disclosure of the information reasonably could be expected to result in damage to the national security, which includes defense against transnational terrorism, and the original classification authority is able to identify or describe the damage.

(b) Classified information shall not be declassified automatically as a result of any unauthorized disclosure of identical or similar information.

(c) The unauthorized disclosure of foreign government information is presumed to cause damage to the national security.

Sec. 1.2. Classification Levels. (a) Information may be classified at one of the following three levels:

- (1) "Top Secret" shall be applied to information, the unauthorized disclosure of which reasonably could be expected to cause exceptionally grave damage to the national security that the original classification authority is able to identify or describe.

(2) "Secret" shall be applied to information, the unauthorized disclosure of which reasonably could be expected to cause serious damage to the national security that the original classification authority is able to identify or describe.

(3) "Confidential" shall be applied to information, the unauthorized disclosure of which reasonably could be expected to cause damage to the national security that the original classification authority is able to identify or describe.

(b) Except as otherwise provided by statute, no other terms shall be used to identify United States classified information.

Sec. 1.3. Classification Authority. (a) The authority to classify information originally may be exercised only by:

(1) the President and, in the performance of executive duties, the Vice President;

(2) agency heads and officials designated by the President in the Federal Register; and

(3) United States Government officials delegated this authority pursuant to paragraph (c) of this section.

(b) Officials authorized to classify information at a specified level are also authorized to classify information at a lower level.

(c) Delegation of original classification authority.

(1) Delegations of original classification authority shall be limited to the minimum required to administer this order. Agency heads are responsible for ensuring that designated subordinate officials have a demonstrable and continuing need to exercise this authority.

(2) "Top Secret" original classification authority may be delegated only by the President; in the performance of executive duties, the Vice President; or an agency head or official designated pursuant to paragraph (a)(2) of this section.

(3) "Secret" or "Confidential" original classification authority may be delegated only by the President; in the performance of executive duties, the Vice President; or an agency head or official designated pursuant to paragraph (a)(2) of this section; or the senior agency official described in section 5.4(d) of this order, provided that official has been delegated "Top Secret" original classification authority by the agency head.

(4) Each delegation of original classification authority shall be in writing and the authority shall not be redelegated except as provided in this order. Each delegation shall identify the official by name or position title.

(d) Original classification authorities must receive training in original classification as provided in this order and its implementing directives. Such training must include instruction on the proper safeguarding of classified information and of the criminal, civil, and administrative sanctions that may be brought against an individual who fails to protect classified information from unauthorized disclosure.

(e) Exceptional cases. When an employee, government contractor, licensee, certificate holder, or grantee of an agency who does not have original classification authority originates information believed by that person to require classification, the information shall be protected in a manner consistent with this order and its implementing directives. The information shall be transmitted promptly as provided

under this order or its implementing directives to the agency that has appropriate subject matter interest and classification authority with respect to this information. That agency shall decide within 30 days whether to classify this information. If it is not clear which agency has classification responsibility for this information, it shall be sent to the Director of the Information Security Oversight Office. The Director shall determine the agency having primary subject matter interest and forward the information, with appropriate recommendations, to that agency for a classification determination.

Sec. 1.4. Classification Categories. Information shall not be considered for classification unless it concerns:

- (a) military plans, weapons systems, or operations;
- (b) foreign government information;
- (c) intelligence activities (including special activities), intelligence sources or methods, or cryptology;
- (d) foreign relations or foreign activities of the United States, including confidential sources;
- (e) scientific, technological, or economic matters relating to the national security, which includes defense against transnational terrorism;
- (f) United States Government programs for safeguarding nuclear materials or facilities;
- (g) vulnerabilities or capabilities of systems, installations, infrastructures, projects, plans, or protection services relating to the national security, which includes defense against transnational terrorism; or
- (h) weapons of mass destruction.

Sec. 1.5. Duration of Classification. (a) At the time of original classification, the original classification authority shall attempt to establish a specific date or event for declassification based upon the duration of the national security sensitivity of the information. Upon reaching the date or event, the information shall be automatically declassified. The date or event shall not exceed the time frame established in paragraph (b) of this section.

(b) If the original classification authority cannot determine an earlier specific date or event for declassification, information shall be marked for declassification 10 years from the date of the original decision, unless the original classification authority otherwise determines that the sensitivity of the information requires that it shall be marked for declassification for up to 25 years from the date of the original decision. All information classified under this section shall be subject to section 3.3 of this order if it is contained in records of permanent historical value under title 44, United States Code.

(c) An original classification authority may extend the duration of classification, change the level of classification, or reclassify specific information only when the standards and procedures for classifying information under this order are followed.

(d) Information marked for an indefinite duration of classification under predecessor orders, for example, marked as "Originating Agency's Determination Required," or information classified under predecessor orders that contains no declassification instructions shall be declassified in accordance with part 3 of this order.

Sec. 1.6. Identification and Markings. (a) At the time of original classification, the following shall appear on the face of each classified document, or shall be applied to other classified media in an appropriate manner:

- (1) one of the three classification levels defined in section 1.2 of this order;
- (2) the identity, by name or personal identifier and position, of the original classification authority;
- (3) the agency and office of origin, if not otherwise evident;
- (4) declassification instructions, which shall indicate one of the following:
 - (A) the date or event for declassification, as prescribed in section 1.5(a) or section 1.5(c);
 - (B) the date that is 10 years from the date of original classification, as prescribed in section 1.5(b); or
 - (C) the date that is up to 25 years from the date of original classification, as prescribed in section 1.5 (b); and
- (5) a concise reason for classification that, at a minimum, cites the applicable classification categories in section 1.4 of this order.

(b) Specific information described in paragraph (a) of this section may be excluded if it would reveal additional classified information.

(c) With respect to each classified document, the agency originating the document shall, by marking or other means, indicate which portions are classified, with the applicable classification level, and which portions are unclassified. In accordance with standards prescribed in directives issued under this order, the Director of the Information Security Oversight Office may grant waivers of this requirement. The Director shall revoke any waiver upon a finding of abuse.

(d) Markings implementing the provisions of this order, including abbreviations and requirements to safeguard classified working papers, shall conform to the standards prescribed in implementing directives issued pursuant to this order.

(e) Foreign government information shall retain its original classification markings or shall be assigned a U.S. classification that provides a degree of protection at least equivalent to that required by the entity that furnished the information. Foreign government information retaining its original classification markings need not be assigned a U.S. classification marking provided that the responsible agency determines that the foreign government markings are adequate to meet the purposes served by U.S. classification markings.

(f) Information assigned a level of classification under this or predecessor orders shall be considered as classified at that level of classification despite the omission of other required markings. Whenever such information is used in the derivative classification process or is reviewed for possible declassification, holders of such information shall coordinate with an appropriate classification authority for the application of omitted markings.

(g) The classification authority shall, whenever practicable, use a classified addendum whenever classified information constitutes a small portion of an otherwise unclassified document.

(h) Prior to public release, all declassified records shall be appropriately marked to reflect their declassification.

Sec. 1.7. Classification Prohibitions and Limitations. (a) In no case shall information be classified in order to:

- (1) conceal violations of law, inefficiency, or administrative error;
- (2) prevent embarrassment to a person, organization, or agency;
- (3) restrain competition; or
- (4) prevent or delay the release of information that does not require protection in the interest of the national security.

(b) Basic scientific research information not clearly related to the national security shall not be classified.

(c) Information may be reclassified after declassification and release to the public under proper authority only in accordance with the following conditions:

- (1) the reclassification action is taken under the personal authority of the agency head or deputy agency head, who determines in writing that the reclassification of the information is necessary in the interest of the national security;
- (2) the information may be reasonably recovered; and
- (3) the reclassification action is reported promptly to the Director of the Information Security Oversight Office.

(d) Information that has not previously been disclosed to the public under proper authority may be classified or reclassified after an agency has received a request for it under the Freedom of Information Act (5 U.S.C. 552) or the Privacy Act of 1974 (5 U.S.C. 552a), or the mandatory review provisions of section 3.5 of this order only if such classification meets the requirements of this order and is accomplished on a document-by-document basis with the personal participation or under the direction of the agency head, the deputy agency head, or the senior agency official designated under section 5.4 of this order.

(e) Compilations of items of information that are individually unclassified may be classified if the compiled information reveals an additional association or relationship that: (1) meets the standards for classification under this order; and (2) is not otherwise revealed in the individual items of information. As used in this order, "compilation" means an aggregation of pre-existing unclassified items of information.

Sec. 1.8. Classification Challenges. (a) Authorized holders of information who, in good faith, believe that its classification status is improper are encouraged and expected to challenge the classification status of the information in accordance with agency procedures established under paragraph (b) of this section.

(b) In accordance with implementing directives issued pursuant to this order, an agency head or senior agency official shall establish procedures under which authorized holders of information are encouraged and expected to challenge the classification of information that they believe is improperly classified or unclassified. These procedures shall ensure that:

- (1) individuals are not subject to retribution for bringing such actions;

- (2) an opportunity is provided for review by an impartial official or panel; and
- (3) individuals are advised of their right to appeal agency decisions to the Interagency Security Classification Appeals Panel (Panel) established by section 5.3 of this order.

PART 2--DERIVATIVE CLASSIFICATION

Sec. 2.1. Use of Derivative Classification. (a) Persons who only reproduce, extract, or summarize classified information, or who only apply classification markings derived from source material or as directed by a classification guide, need not possess original classification authority.

(b) Persons who apply derivative classification markings shall:

- (1) observe and respect original classification decisions; and
- (2) carry forward to any newly created documents the pertinent classification markings. For information derivatively classified based on multiple sources, the derivative classifier shall carry forward:
 - (A) the date or event for declassification that corresponds to the longest period of classification among the sources; and
 - (B) a listing of these sources on or attached to the official file or record copy.

Sec. 2.2. Classification Guides. (a) Agencies with original classification authority shall prepare classification guides to facilitate the proper and uniform derivative classification of information. These guides shall conform to standards contained in directives issued under this order.

(b) Each guide shall be approved personally and in writing by an official who:

- (1) has program or supervisory responsibility over the information or is the senior agency official; and
- (2) is authorized to classify information originally at the highest level of classification prescribed in the guide.

(c) Agencies shall establish procedures to ensure that classification guides are reviewed and updated as provided in directives issued under this order.

PART 3--DECLASSIFICATION AND DOWNGRADING

Sec. 3.1. Authority for Declassification. (a) Information shall be declassified as soon as it no longer meets the standards for classification under this order.

(b) It is presumed that information that continues to meet the classification requirements under this order requires continued protection. In some exceptional cases, however, the need to protect such information may be outweighed by the public interest in disclosure of the information, and in these cases the information should be declassified. When such questions arise, they shall be referred to the agency head or the senior agency official. That official will determine, as an exercise of discretion, whether the public interest in disclosure outweighs the damage to the national security that might reasonably be expected from disclosure. This provision does not:

- (1) amplify or modify the substantive criteria or procedures for classification; or
- (2) create any substantive or procedural rights subject to judicial review.

(c) If the Director of the Information Security Oversight Office determines that information is classified in violation of this order, the Director may require the information to be declassified by the agency that originated the classification. Any such decision by the Director may be appealed to the President through the Assistant to the President for National Security Affairs. The information shall remain classified pending a prompt decision on the appeal.

(d) The provisions of this section shall also apply to agencies that, under the terms of this order, do not have original classification authority, but had such authority under predecessor orders.

Sec. 3.2. Transferred Records. (a) In the case of classified records transferred in conjunction with a transfer of functions, and not merely for storage purposes, the receiving agency shall be deemed to be the originating agency for purposes of this order.

(b) In the case of classified records that are not officially transferred as described in paragraph (a) of this section, but that originated in an agency that has ceased to exist and for which there is no successor agency, each agency in possession of such records shall be deemed to be the originating agency for purposes of this order. Such records may be declassified or downgraded by the agency in possession after consultation with any other agency that has an interest in the subject matter of the records.

(c) Classified records accessioned into the National Archives and Records Administration (National Archives) as of the effective date of this order shall be declassified or downgraded by the Archivist of the United States (Archivist) in accordance with this order, the directives issued pursuant to this order, agency declassification guides, and any existing procedural agreement between the Archivist and the relevant agency head.

(d) The originating agency shall take all reasonable steps to declassify classified information contained in records determined to have permanent historical value before they are accessioned into the National Archives. However, the Archivist may require that classified records be accessioned into the National Archives when necessary to comply with the provisions of the Federal Records Act. This provision does not apply to records being transferred to the Archivist pursuant to section 2203 of title 44, United States Code, or records for which the National Archives serves as the custodian of the records of an agency or organization that has gone out of existence.

(e) To the extent practicable, agencies shall adopt a system of records management that will facilitate the public release of documents at the time such documents are declassified pursuant to the provisions for automatic declassification in section 3.3 of this order.

Sec. 3.3. Automatic Declassification. (a) Subject to paragraphs (b)-(e) of this section, on December 31, 2006, all classified records that (1) are more than 25 years old and (2) have been determined to have permanent historical value under title 44, United States Code, shall be automatically declassified whether or not the records have been reviewed. Subsequently, all classified records shall be automatically declassified on December 31 of the year that is 25 years from the date of its original classification, except as provided in paragraphs (b)-(e) of this section.

(b) An agency head may exempt from automatic declassification under paragraph (a) of this section specific information, the release of which could be expected to:

(1) reveal the identity of a confidential human source, or a human intelligence source, or reveal information about the application of an intelligence source or method;

(2) reveal information that would assist in the development or use of weapons of mass destruction;

- (3) reveal information that would impair U.S. cryptologic systems or activities;
- (4) reveal information that would impair the application of state of the art technology within a U.S. weapon system;
- (5) reveal actual U.S. military war plans that remain in effect;
- (6) reveal information, including foreign government information, that would seriously and demonstrably impair relations between the United States and a foreign government, or seriously and demonstrably undermine ongoing diplomatic activities of the United States;
- (7) reveal information that would clearly and demonstrably impair the current ability of United States Government officials to protect the President, Vice President, and other protectees for whom protection services, in the interest of the national security, are authorized;
- (8) reveal information that would seriously and demonstrably impair current national security emergency preparedness plans or reveal current vulnerabilities of systems, installations, infrastructures, or projects relating to the national security; or
- (9) violate a statute, treaty, or international agreement.

(c) An agency head shall notify the President through the Assistant to the President for National Security Affairs of any specific file series of records for which a review or assessment has determined that the information within that file series almost invariably falls within one or more of the exemption categories listed in paragraph (b) of this section and which the agency proposes to exempt from automatic declassification. The notification shall include:

- (1) a description of the file series;
- (2) an explanation of why the information within the file series is almost invariably exempt from automatic declassification and why the information must remain classified for a longer period of time; and
- (3) except for the identity of a confidential human source or a human intelligence source, as provided in paragraph (b) of this section, a specific date or event for declassification of the information.

The President may direct the agency head not to exempt the file series or to declassify the information within that series at an earlier date than recommended. File series exemptions previously approved by the President shall remain valid without any additional agency action.

(d) At least 180 days before information is automatically declassified under this section, an agency head or senior agency official shall notify the Director of the Information Security Oversight Office, serving as Executive Secretary of the Panel, of any specific information beyond that included in a notification to the President under paragraph (c) of this section that the agency proposes to exempt from automatic declassification. The notification shall include:

- (1) a description of the information, either by reference to information in specific records or in the form of a declassification guide;
- (2) an explanation of why the information is exempt from automatic declassification and must remain classified for a longer period of time; and

(3) except for the identity of a confidential human source or a human intelligence source, as provided in paragraph (b) of this section, a specific date or event for declassification of the information. The Panel may direct the agency not to exempt the information or to declassify it at an earlier date than recommended. The agency head may appeal such a decision to the President through the Assistant to the President for National Security Affairs. The information will remain classified while such an appeal is pending.

(e) The following provisions shall apply to the onset of automatic declassification:

(1) Classified records within an integral file block, as defined in this order, that are otherwise subject to automatic declassification under this section shall not be automatically declassified until December 31 of the year that is 25 years from the date of the most recent record within the file block.

(2) By notification to the Director of the Information Security Oversight Office, before the records are subject to automatic declassification, an agency head or senior agency official designated under section 5.4 of this order may delay automatic declassification for up to 5 additional years for classified information contained in microforms, motion pictures, audiotapes, videotapes, or comparable media that make a review for possible declassification exemptions more difficult or costly.

(3) By notification to the Director of the Information Security Oversight Office, before the records are subject to automatic declassification, an agency head or senior agency official designated under section 5.4 of this order may delay automatic declassification for up to 3 years for classified records that have been referred or transferred to that agency by another agency less than 3 years before automatic declassification would otherwise be required.

(4) By notification to the Director of the Information Security Oversight Office, an agency head or senior agency official designated under section 5.4 of this order may delay automatic declassification for up to 3 years from the date of discovery of classified records that were inadvertently not reviewed prior to the effective date of automatic declassification.

(f) Information exempted from automatic declassification under this section shall remain subject to the mandatory and systematic declassification review provisions of this order.

(g) The Secretary of State shall determine when the United States should commence negotiations with the appropriate officials of a foreign government or international organization of governments to modify any treaty or international agreement that requires the classification of information contained in records affected by this section for a period longer than 25 years from the date of its creation, unless the treaty or international agreement pertains to information that may otherwise remain classified beyond 25 years under this section.

(h) Records containing information that originated with other agencies or the disclosure of which would affect the interests or activities of other agencies shall be referred for review to those agencies and the information of concern shall be subject to automatic declassification only by those agencies, consistent with the provisions of subparagraphs (e)(3) and (e)(4) of this section.

Sec. 3.4. Systematic Declassification Review. (a) Each agency that has originated classified information under this order or its predecessors shall establish and conduct a program for systematic declassification review. This program shall apply to records of permanent historical value exempted from automatic

declassification under section 3.3 of this order. Agencies shall prioritize the systematic review of records based upon the degree of researcher interest and the likelihood of declassification upon review.

(b) The Archivist shall conduct a systematic declassification review program for classified records: (1) accessioned into the National Archives as of the effective date of this order; (2) transferred to the Archivist pursuant to section 2203 of title 44, United States Code; and (3) for which the National Archives serves as the custodian for an agency or organization that has gone out of existence. This program shall apply to pertinent records no later than 25 years from the date of their creation. The Archivist shall establish priorities for the systematic review of these records based upon the degree of researcher interest and the likelihood of declassification upon review. These records shall be reviewed in accordance with the standards of this order, its implementing directives, and declassification guides provided to the Archivist by each agency that originated the records. The Director of the Information Security Oversight Office shall ensure that agencies provide the Archivist with adequate and current declassification guides.

(c) After consultation with affected agencies, the Secretary of Defense may establish special procedures for systematic review for declassification of classified cryptologic information, and the Director of Central Intelligence may establish special procedures for systematic review for declassification of classified information pertaining to intelligence activities (including special activities), or intelligence sources or methods.

Sec. 3.5. Mandatory Declassification Review. (a) Except as provided in paragraph (b) of this section, all information classified under this order or predecessor orders shall be subject to a review for declassification by the originating agency if:

- (1) the request for a review describes the document or material containing the information with sufficient specificity to enable the agency to locate it with a reasonable amount of effort;
- (2) the information is not exempted from search and review under sections 105C, 105D, or 701 of the National Security Act of 1947 (50 U.S.C. 403-5c, 403-5e, and 431); and
- (3) the information has not been reviewed for declassification within the past 2 years. If the agency has reviewed the information within the past 2 years, or the information is the subject of pending litigation, the agency shall inform the requester of this fact and of the requesters appeal rights.

(b) Information originated by:

- (1) the incumbent President or, in the performance of executive duties, the incumbent Vice President;
- (2) the incumbent Presidents White House Staff or, in the performance of executive duties, the incumbent Vice Presidents Staff;
- (3) committees, commissions, or boards appointed by the incumbent President; or
- (4) other entities within the Executive Office of the President that solely advise and assist the incumbent President is exempted from the provisions of paragraph (a) of this section. However, the Archivist shall have the authority to review, downgrade, and declassify papers or records of former Presidents under the control of the Archivist pursuant to sections 2107, 2111, 2111 note, or 2203 of title 44, United States Code. Review procedures developed by the Archivist shall provide for consultation with agencies having primary subject matter interest and shall be

consistent with the provisions of applicable laws or lawful agreements that pertain to the respective Presidential papers or records. Agencies with primary subject matter interest shall be notified promptly of the Archivists decision. Any final decision by the Archivist may be appealed by the requester or an agency to the Panel. The information shall remain classified pending a prompt decision on the appeal.

(c) Agencies conducting a mandatory review for declassification shall declassify information that no longer meets the standards for classification under this order. They shall release this information unless withholding is otherwise authorized and warranted under applicable law.

(d) In accordance with directives issued pursuant to this order, agency heads shall develop procedures to process requests for the mandatory review of classified information. These procedures shall apply to information classified under this or predecessor orders. They also shall provide a means for administratively appealing a denial of a mandatory review request, and for notifying the requester of the right to appeal a final agency decision to the Panel.

(e) After consultation with affected agencies, the Secretary of Defense shall develop special procedures for the review of cryptologic information; the Director of Central Intelligence shall develop special procedures for the review of information pertaining to intelligence activities (including special activities), or intelligence sources or methods; and the Archivist shall develop special procedures for the review of information accessioned into the National Archives.

Sec. 3.6. Processing Requests and Reviews. In response to a request for information under the Freedom of Information Act, the Privacy Act of 1974, or the mandatory review provisions of this order, or pursuant to the automatic declassification or systematic review provisions of this order:

(a) An agency may refuse to confirm or deny the existence or nonexistence of requested records whenever the fact of their existence or nonexistence is itself classified under this order or its predecessors.

(b) When an agency receives any request for documents in its custody that contain information that was originally classified by another agency, or comes across such documents in the process of the automatic declassification or systematic review provisions of this order, it shall refer copies of any request and the pertinent documents to the originating agency for processing, and may, after consultation with the originating agency, inform any requester of the referral unless such association is itself classified under this order or its predecessors. In cases in which the originating agency determines in writing that a response under paragraph (a) of this section is required, the referring agency shall respond to the requester in accordance with that paragraph.

Sec. 3.7. Declassification Database. (a) The Director of the Information Security Oversight Office, in conjunction with those agencies that originate classified information, shall coordinate the linkage and effective utilization of existing agency databases of records that have been declassified and publicly released.

(b) Agency heads shall fully cooperate with the Director of the Information Security Oversight Office in these efforts.

PART 4--SAFEGUARDING

Sec. 4.1. General Restrictions on Access. (a) A person may have access to classified information provided that:

(1) a favorable determination of eligibility for access has been made by an agency head or the agency heads designee;

(2) the person has signed an approved nondisclosure agreement; and

(3) the person has a need-to-know the information.

(b) Every person who has met the standards for access to classified information in paragraph (a) of this section shall receive contemporaneous training on the proper safeguarding of classified information and on the criminal, civil, and administrative sanctions that may be imposed on an individual who fails to protect classified information from unauthorized disclosure.

(c) Classified information shall remain under the control of the originating agency or its successor in function. An agency shall not disclose information originally classified by another agency without its authorization. An official or employee leaving agency service may not remove classified information from the agency's control.

(d) Classified information may not be removed from official premises without proper authorization.

(e) Persons authorized to disseminate classified information outside the executive branch shall ensure the protection of the information in a manner equivalent to that provided within the executive branch.

(f) Consistent with law, directives, and regulation, an agency head or senior agency official shall establish uniform procedures to ensure that automated information systems, including networks and telecommunications systems, that collect, create, communicate, compute, disseminate, process, or store classified information have controls that:

(1) prevent access by unauthorized persons; and

(2) ensure the integrity of the information.

(g) Consistent with law, directives, and regulation, each agency head or senior agency official shall establish controls to ensure that classified information is used, processed, stored, reproduced, transmitted, and destroyed under conditions that provide adequate protection and prevent access by unauthorized persons.

(h) Consistent with directives issued pursuant to this order, an agency shall safeguard foreign government information under standards that provide a degree of protection at least equivalent to that required by the government or international organization of governments that furnished the information. When adequate to achieve equivalency, these standards may be less restrictive than the safeguarding standards that ordinarily apply to United States "Confidential" information, including modified handling and transmission and allowing access to individuals with a need-to-know who have not otherwise been cleared for access to classified information or executed an approved nondisclosure agreement.

(i) Except as otherwise provided by statute, this order, directives implementing this order, or by direction of the President, classified information originating in one agency shall not be disseminated outside any other agency to which it has been made available without the consent of the originating agency. An agency head or senior agency official may waive this requirement for specific information originated within that agency. For purposes of this section, the Department of Defense shall be considered one agency. Prior consent is not required when referring records for declassification review that contain information originating in several agencies.

Sec. 4.2. Distribution Controls. (a) Each agency shall establish controls over the distribution of classified information to ensure that it is distributed only to organizations or individuals eligible for access and with a need-to-know the information.

(b) In an emergency, when necessary to respond to an imminent threat to life or in defense of the homeland, the agency head or any designee may authorize the disclosure of classified information to an individual or individuals who are otherwise not eligible for access. Such actions shall be taken only in accordance with the directives implementing this order and any procedures issued by agencies governing the classified information, which shall be designed to minimize the classified information that is disclosed under these circumstances and the number of individuals who receive it. Information disclosed under this provision or implementing directives and procedures shall not be deemed declassified as a result of such disclosure or subsequent use by a recipient. Such disclosures shall be reported promptly to the originator of the classified information. For purposes of this section, the Director of Central Intelligence may issue an implementing directive governing the emergency disclosure of classified intelligence information.

(c) Each agency shall update, at least annually, the automatic, routine, or recurring distribution of classified information that they distribute. Recipients shall cooperate fully with distributors who are updating distribution lists and shall notify distributors whenever a relevant change in status occurs.

Sec. 4.3. Special Access Programs. (a) Establishment of special access programs. Unless otherwise authorized by the President, only the Secretaries of State, Defense, and Energy, and the Director of Central Intelligence, or the principal deputy of each, may create a special access program. For special access programs pertaining to intelligence activities (including special activities, but not including military operational, strategic, and tactical programs), or intelligence sources or methods, this function shall be exercised by the Director of Central Intelligence. These officials shall keep the number of these programs at an absolute minimum, and shall establish them only when the program is required by statute or upon a specific finding that:

(1) the vulnerability of, or threat to, specific information is exceptional; and

(2) the normal criteria for determining eligibility for access applicable to information classified at the same level are not deemed sufficient to protect the information from unauthorized disclosure.

(b) Requirements and limitations.

(1) Special access programs shall be limited to programs in which the number of persons who will have access ordinarily will be reasonably small and commensurate with the objective of providing enhanced protection for the information involved.

(2) Each agency head shall establish and maintain a system of accounting for special access programs consistent with directives issued pursuant to this order.

(3) Special access programs shall be subject to the oversight program established under section 5.4(d) of this order. In addition, the Director of the Information Security Oversight Office shall be afforded access to these programs, in accordance with the security requirements of each program, in order to perform the functions assigned to the Information Security Oversight Office under this order. An agency head may limit access to a special access program to the Director

and no more than one other employee of the Information Security Oversight Office, or, for special access programs that are extraordinarily sensitive and vulnerable, to the Director only.

(4) The agency head or principal deputy shall review annually each special access program to determine whether it continues to meet the requirements of this order.

(5) Upon request, an agency head shall brief the Assistant to the President for National Security Affairs, or a designee, on any or all of the agency's special access programs.

(c) Nothing in this order shall supersede any requirement made by or under 10 U.S.C. 119.

Sec. 4.4. Access by Historical Researchers and Certain Former Government Personnel. (a) The requirement in section 4.1(a)(3) of this order that access to classified information may be granted only to individuals who have a need-to-know the information may be waived for persons who:

(1) are engaged in historical research projects;

(2) previously have occupied policy-making positions to which they were appointed by the President under section 105(a)(2)(A) of title 3, United States Code, or the Vice President under 106(a)(1)(A) of title 3, United States Code; or

(3) served as President or Vice President.

(b) Waivers under this section may be granted only if the agency head or senior agency official of the originating agency:

(1) determines in writing that access is consistent with the interest of the national security;

(2) takes appropriate steps to protect classified information from unauthorized disclosure or compromise, and ensures that the information is safeguarded in a manner consistent with this order; and

(3) limits the access granted to former Presidential appointees and Vice Presidential appointees to items that the person originated, reviewed, signed, or received while serving as a Presidential appointee or a Vice Presidential appointee.

PART 5--IMPLEMENTATION AND REVIEW

Sec. 5.1. Program Direction. (a) The Director of the Information Security Oversight Office, under the direction of the Archivist and in consultation with the Assistant to the President for National Security Affairs, shall issue such directives as are necessary to implement this order. These directives shall be binding upon the agencies. Directives issued by the Director of the Information Security Oversight Office shall establish standards for:

(1) classification and marking principles;

(2) safeguarding classified information, which shall pertain to the handling, storage, distribution, transmittal, and destruction of and accounting for classified information;

(3) agency security education and training programs;

(4) agency self-inspection programs; and

(5) classification and declassification guides.

(b) The Archivist shall delegate the implementation and monitoring functions of this program to the Director of the Information Security Oversight Office.

Sec. 5.2. Information Security Oversight Office. (a) There is established within the National Archives an Information Security Oversight Office. The Archivist shall appoint the Director of the Information Security Oversight Office, subject to the approval of the President.

(b) Under the direction of the Archivist, acting in consultation with the Assistant to the President for National Security Affairs, the Director of the Information Security Oversight Office shall:

- (1) develop directives for the implementation of this order;
- (2) oversee agency actions to ensure compliance with this order and its implementing directives;
- (3) review and approve agency implementing regulations and agency guides for systematic declassification review prior to their issuance by the agency;
- (4) have the authority to conduct on-site reviews of each agency's program established under this order, and to require of each agency those reports, information, and other cooperation that may be necessary to fulfill its responsibilities. If granting access to specific categories of classified information would pose an exceptional national security risk, the affected agency head or the senior agency official shall submit a written justification recommending the denial of access to the President through the Assistant to the President for National Security Affairs within 60 days of the request for access. Access shall be denied pending the response;
- (5) review requests for original classification authority from agencies or officials not granted original classification authority and, if deemed appropriate, recommend Presidential approval through the Assistant to the President for National Security Affairs;
- (6) 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 this order;
- (7) have the authority to prescribe, after consultation with affected agencies, standardization of forms or procedures that will promote the implementation of the program established under this order;
- (8) report at least annually to the President on the implementation of this order; and
- (9) convene and chair interagency meetings to discuss matters pertaining to the program established by this order.

Sec. 5.3. Interagency Security Classification Appeals Panel.

(a) Establishment and administration.

(1) There is established an Interagency Security Classification Appeals Panel. The Departments of State, Defense, and Justice, the Central Intelligence Agency, the National Archives, and the Assistant to the President for National Security Affairs shall each be represented by a senior-level representative who is a full-time or permanent part-time Federal officer or employee designated to serve as a member of the Panel by the respective agency head. The President shall select the Chair of the Panel from among the Panel members.

(2) A vacancy on the Panel shall be filled as quickly as possible as provided in paragraph (a)(1) of this section.

(3) The Director of the Information Security Oversight Office shall serve as the Executive Secretary. The staff of the Information Security Oversight Office shall provide program and administrative support for the Panel.

(4) The members and staff of the Panel shall be required to meet eligibility for access standards in order to fulfill the Panels functions.

(5) The Panel shall meet at the call of the Chair. The Chair shall schedule meetings as may be necessary for the Panel to fulfill its functions in a timely manner.

(6) The Information Security Oversight Office shall include in its reports to the President a summary of the Panels activities.

(b) Functions. The Panel shall:

(1) decide on appeals by persons who have filed classification challenges under section 1.8 of this order;

(2) approve, deny, or amend agency exemptions from automatic declassification as provided in section 3.3 of this order; and

(3) decide on appeals by persons or entities who have filed requests for mandatory declassification review under section 3.5 of this order.

(c) Rules and procedures. The Panel shall issue bylaws, which shall be published in the Federal Register. The bylaws shall establish the rules and procedures that the Panel will follow in accepting, considering, and issuing decisions on appeals. The rules and procedures of the Panel shall provide that the Panel will consider appeals only on actions in which:

(1) the appellant has exhausted his or her administrative remedies within the responsible agency;

(2) there is no current action pending on the issue within the Federal courts; and

(3) the information has not been the subject of review by the Federal courts or the Panel within the past 2 years.

(d) Agency heads shall cooperate fully with the Panel so that it can fulfill its functions in a timely and fully informed manner. An agency head may appeal a decision of the Panel to the President through the Assistant to the President for National Security Affairs. The Panel shall report to the President through the Assistant to the President for National Security Affairs any instance in which it believes that an agency head is not cooperating fully with the Panel.

(e) The Panel is established for the sole purpose of advising and assisting the President in the discharge of his constitutional and discretionary authority to protect the national security of the United States. Panel decisions are committed to the discretion of the Panel, unless changed by the President.

(f) Notwithstanding paragraphs (a) through (e) of this section, whenever the Panel reaches a conclusion that information owned or controlled by the Director of Central Intelligence (Director) should be declassified, and the Director notifies the Panel that he objects to its conclusion because he has determined that the information could reasonably be expected to cause damage to the national security

and to reveal (1) the identity of a human intelligence source, or (2) information about the application of an intelligence source or method (including any information that concerns, or is provided as a result of, a relationship with a cooperating intelligence element of a foreign government), the information shall remain classified unless the Director's determination is appealed to the President, and the President reverses the determination.

Sec. 5.4. General Responsibilities. Heads of agencies that originate or handle classified information shall:

(a) demonstrate personal commitment and commit senior management to the successful implementation of the program established under this order;

(b) commit necessary resources to the effective implementation of the program established under this order;

(c) ensure that agency records systems are designed and maintained to optimize the safeguarding of classified information, and to facilitate its declassification under the terms of this order when it no longer meets the standards for continued classification; and

(d) designate a senior agency official to direct and administer the program, whose responsibilities shall include:

(1) overseeing the agency's program established under this order, provided, an agency head may designate a separate official to oversee special access programs authorized under this order. This official shall provide a full accounting of the agency's special access programs at least annually;

(2) promulgating implementing regulations, which shall be published in the Federal Register to the extent that they affect members of the public;

(3) establishing and maintaining security education and training programs;

(4) establishing and maintaining an ongoing self-inspection program, which shall include the periodic review and assessment of the agency's classified product;

(5) establishing procedures to prevent unnecessary access to classified information, including procedures that:

(A) require that a need for access to classified information is established before initiating administrative clearance procedures; and

(B) ensure that the number of persons granted access to classified information is limited to the minimum consistent with operational and security requirements and needs;

(6) developing special contingency plans for the safeguarding of classified information used in or near hostile or potentially hostile areas;

(7) ensuring that the performance contract or other system used to rate civilian or military personnel performance includes the management of classified information as a critical element or item to be evaluated in the rating of:

(A) original classification authorities;

(B) security managers or security specialists; and

(C) all other personnel whose duties significantly involve the creation or handling of classified information;

(8) accounting for the costs associated with the implementation of this order, which shall be reported to the Director of the Information Security Oversight Office for publication; and

(9) assigning in a prompt manner agency personnel to respond to any request, appeal, challenge, complaint, or suggestion arising out of this order that pertains to classified information that originated in a component of the agency that no longer exists and for which there is no clear successor in function.

Sec. 5.5. Sanctions. (a) If the Director of the Information Security Oversight Office finds that a violation of this order or its implementing directives has occurred, the Director shall make a report to the head of the agency or to the senior agency official so that corrective steps, if appropriate, may be taken.

(b) Officers and employees of the United States Government, and its contractors, licensees, certificate holders, and grantees shall be subject to appropriate sanctions if they knowingly, willfully, or negligently:

(1) disclose to unauthorized persons information properly classified under this order or predecessor orders;

(2) classify or continue the classification of information in violation of this order or any implementing directive;

(3) create or continue a special access program contrary to the requirements of this order; or

(4) contravene any other provision of this order or its implementing directives.

(c) Sanctions may include reprimand, suspension without pay, removal, termination of classification authority, loss or denial of access to classified information, or other sanctions in accordance with applicable law and agency regulation.

(d) The agency head, senior agency official, or other supervisory official shall, at a minimum, promptly remove the classification authority of any individual who demonstrates reckless disregard or a pattern of error in applying the classification standards of this order.

(e) The agency head or senior agency official shall:

(1) take appropriate and prompt corrective action when a violation or infraction under paragraph (b) of this section occurs; and

(2) notify the Director of the Information Security Oversight Office when a violation under paragraph (b)(1), (2), or (3) of this section occurs.

PART 6--GENERAL PROVISIONS

Sec. 6.1. Definitions. For purposes of this order:

(a) "Access" means the ability or opportunity to gain knowledge of classified information.

(b) "Agency" means any "Executive agency," as defined in 5 U.S.C. 105; any "Military department" as defined in 5 U.S.C. 102; and any other entity within the executive branch that comes into the possession of classified information.

(c) "Automated information system" means an assembly of computer hardware, software, or firmware configured to collect, create, communicate, compute, disseminate, process, store, or control data or information.

(d) "Automatic declassification" means the declassification of information based solely upon:

(1) the occurrence of a specific date or event as determined by the original classification authority; or

(2) the expiration of a maximum time frame for duration of classification established under this order.

(e) "Classification" means the act or process by which information is determined to be classified information.

(f) "Classification guidance" means any instruction or source that prescribes the classification of specific information.

(g) "Classification guide" means a documentary form of classification guidance issued by an original classification authority that identifies the elements of information regarding a specific subject that must be classified and establishes the level and duration of classification for each such element.

(h) "Classified national security information" or "classified information" means information that has been determined pursuant to this order or any predecessor order to require protection against unauthorized disclosure and is marked to indicate its classified status when in documentary form.

(i) "Confidential source" means any individual or organization that has provided, or that may reasonably be expected to provide, information to the United States on matters pertaining to the national security with the expectation that the information or relationship, or both, are to be held in confidence.

(j) "Damage to the national security" means harm to the national defense or foreign relations of the United States from the unauthorized disclosure of information, taking into consideration such aspects of the information as the sensitivity, value, utility, and provenance of that information.

(k) "Declassification" means the authorized change in the status of information from classified information to unclassified information.

(l) "Declassification authority" means:

(1) the official who authorized the original classification, if that official is still serving in the same position;

(2) the originators current successor in function;

(3) a supervisory official of either; or

(4) officials delegated declassification authority in writing by the agency head or the senior agency official.

(m) "Declassification guide" means written instructions issued by a declassification authority that describes the elements of information regarding a specific subject that may be declassified and the elements that must remain classified.

(n) "Derivative classification" means the incorporating, paraphrasing, restating, or generating in new form information that is already classified, and marking the newly developed material consistent with

the classification markings that apply to the source information. Derivative classification includes the classification of information based on classification guidance. The duplication or reproduction of existing classified information is not derivative classification.

(o) "Document" means any recorded information, regardless of the nature of the medium or the method or circumstances of recording.

(p) "Downgrading" means a determination by a declassification authority that information classified and safeguarded at a specified level shall be classified and safeguarded at a lower level.

(q) "File series" means file units or documents arranged according to a filing system or kept together because they relate to a particular subject or function, result from the same activity, document a specific kind of transaction, take a particular physical form, or have some other relationship arising out of their creation, receipt, or use, such as restrictions on access or use.

(r) "Foreign government information" means:

(1) information provided to the United States Government by a foreign government or governments, an international organization of governments, or any element thereof, with the expectation that the information, the source of the information, or both, are to be held in confidence;

(2) information produced by the United States Government pursuant to or as a result of a joint arrangement with a foreign government or governments, or an international organization of governments, or any element thereof, requiring that the information, the arrangement, or both, are to be held in confidence; or

(3) information received and treated as "foreign government information" under the terms of a predecessor order.

(s) "Information" means any knowledge that can be communicated or documentary material, regardless of its physical form or characteristics, that is owned by, produced by or for, or is under the control of the United States Government. "Control" means the authority of the agency that originates information, or its successor in function, to regulate access to the information.

(t) "Infraction" means any knowing, willful, or negligent action contrary to the requirements of this order or its implementing directives that does not constitute a "violation," as defined below.

(u) "Integral file block" means a distinct component of a file series, as defined in this section, that should be maintained as a separate unit in order to ensure the integrity of the records. An integral file block may consist of a set of records covering either a specific topic or a range of time such as presidential administration or a 5-year retirement schedule within a specific file series that is retired from active use as a group.

(v) "Integrity" means the state that exists when information is unchanged from its source and has not been accidentally or intentionally modified, altered, or destroyed.

(w) "Mandatory declassification review" means the review for declassification of classified information in response to a request for declassification that meets the requirements under section 3.5 of this order.

(x) "Multiple sources" means two or more source documents, classification guides, or a combination of both.

- (y) "National security" means the national defense or foreign relations of the United States.
- (z) "Need-to-know" means a determination made by an authorized holder of classified information that a prospective recipient requires access to specific classified information in order to perform or assist in a lawful and authorized governmental function.
- (aa) "Network" means a system of two or more computers that can exchange data or information.
- (bb) "Original classification" means an initial determination that information requires, in the interest of the national security, protection against unauthorized disclosure.
- (cc) "Original classification authority" means an individual authorized in writing, either by the President, the Vice President in the performance of executive duties, or by agency heads or other officials designated by the President, to classify information in the first instance.
- (dd) "Records" means the records of an agency and Presidential papers or Presidential records, as those terms are defined in title 44, United States Code, including those created or maintained by a government contractor, licensee, certificate holder, or grantee that are subject to the sponsoring agency's control under the terms of the contract, license, certificate, or grant.
- (ee) "Records having permanent historical value" means Presidential papers or Presidential records and the records of an agency that the Archivist has determined should be maintained permanently in accordance with title 44, United States Code.
- (ff) "Records management" means the planning, controlling, directing, organizing, training, promoting, and other managerial activities involved with respect to records creation, records maintenance and use, and records disposition in order to achieve adequate and proper documentation of the policies and transactions of the Federal Government and effective and economical management of agency operations.
- (gg) "Safeguarding" means measures and controls that are prescribed to protect classified information.
- (hh) "Self-inspection" means the internal review and evaluation of individual agency activities and the agency as a whole with respect to the implementation of the program established under this order and its implementing directives.
- (ii) "Senior agency official" means the official designated by the agency head under section 5.4(d) of this order to direct and administer the agency's program under which information is classified, safeguarded, and declassified.
- (jj) "Source document" means an existing document that contains classified information that is incorporated, paraphrased, restated, or generated in new form into a new document.
- (kk) "Special access program" means a program established for a specific class of classified information that imposes safeguarding and access requirements that exceed those normally required for information at the same classification level.
- (ll) "Systematic declassification review" means the review for declassification of classified information contained in records that have been determined by the Archivist to have permanent historical value in accordance with title 44, United States Code.
- (mm) "Telecommunications" means the preparation, transmission, or communication of information by electronic means.

(nn) "Unauthorized disclosure" means a communication or physical transfer of classified information to an unauthorized recipient.

(oo) "Violation" means:

(1) any knowing, willful, or negligent action that could reasonably be expected to result in an unauthorized disclosure of classified information;

(2) any knowing, willful, or negligent action to classify or continue the classification of information contrary to the requirements of this order or its implementing directives; or

(3) any knowing, willful, or negligent action to create or continue a special access program contrary to the requirements of this order.

(pp) "Weapons of mass destruction" means chemical, biological, radiological, and nuclear weapons.

Sec. 6.2. General Provisions. (a) Nothing in this order shall supersede any requirement made by or under the Atomic Energy Act of 1954, as amended, or the National Security Act of 1947, as amended. "Restricted Data" and "Formerly Restricted Data" shall be handled, protected, classified, downgraded, and declassified in conformity with the provisions of the Atomic Energy Act of 1954, as amended, and regulations issued under that Act.

(b) The Attorney General, upon request by the head of an agency or the Director of the Information Security Oversight Office, shall render an interpretation of this order with respect to any question arising in the course of its administration.

(c) Nothing in this order limits the protection afforded any information by other provisions of law, including the Constitution, Freedom of Information Act exemptions, the Privacy Act of 1974, and the National Security Act of 1947, as amended. This order is not intended to and does not create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its departments, agencies, officers, employees, or agents. The foregoing is in addition to the specific provisos set forth in sections 3.1(b) and 5.3(e) of this order.

(d) Executive Order 12356 of April 6, 1982, was revoked as of October 14, 1995.

Sec. 6.3. Effective Date. This order is effective immediately, except for section 1.6, which shall become effective 180 days from the date of this order.