

Two Steps Forward, One Step Back: Mixed Progress Under the Automatic/Systematic Declassification Review Program

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Abstract

Executive Order (E.O.) 12958, signed by President William Clinton in April 1995, dramatically changed the declassification procedure for executive branch records.¹ It created for the first time a process to open quickly huge numbers of records dating to World War II. The program has enjoyed mixed success. Many records locked away in vaults for years are finally being reviewed, and, overall, a fairly large percentage of them are actually being declassified. Many high-level documents, however, have been exempted from the process, and major problems hamper public access to the records actually declassified.

This paper examines the three different types of classified information, the declassification procedures created under previous executive orders and statutes, and their ineffectiveness in opening materials. It summarizes the automatic/systematic declassification review program created by E.O. 12958 and changes resulting from two subsequent executive orders, the records subject to these orders and those that are not, and the information exempted from their operation. Finally, the article evaluates the program's effectiveness and recommends actions to improve it and to increase public awareness and advocacy.

Americans have long recognized the value of openness in government and of keeping official secrecy to the absolute minimum. In 1997, the bipartisan Commission on Protecting and Reducing Government Secrecy described its importance as follows:

The opinions expressed here do not necessarily represent the views of the National Air and Space Museum or the Smithsonian Institution.

¹ Automatic/systematic declassification review procedures established by executive orders, the Freedom of Information Act, and the Mandatory Declassification Review procedure apply only to executive branch records. No formal procedures exist for declassification review of legislative or judicial branch records.

Ensuring public access to information that does not require protection is a key to striking the balance between secrecy and the openness that is central to the proper functioning of this country's political institutions. . . . Broad access to information promotes better decisions. It permits public understanding of the activities of government and promotes more informed debate and accountability. It increases the Government's ability to respond to criticism and justify its actions to the public. It makes possible the free exchange of scientific information and encourages new discoveries that foster economic growth. By allowing a better understanding of our history, it provides opportunities to learn lessons from the past, and it makes it easier to quash unfounded speculation about the Government's past actions.²

One key to increasing openness and reducing secrecy is a robust program for conducting declassification reviews of the huge number of older classified records and making them accessible to the public. Unfortunately, effective procedures have been in place only intermittently since World War II.

What Information Is Classified?

Before World War II, various military regulations and statutes classified certain types of information.³ The total volume of these records, however, was quite small. During and after World War II, however, the executive branch classified massive quantities of records—many billions of pages of paper records (textual records) and tens of thousands of cubic feet of photographs, films, maps, charts, microfiche, microfilm, magnetic tapes, hard drives, floppy discs, CD-ROMS, and other nontextual records.⁴ These records contained one or more of three separate categories of classified information.

President Franklin Roosevelt created the first category, National Security Information (NSI), under a series of executive orders beginning with E.O. 8381

² Commission on Protecting and Reducing Government Secrecy, *Report of the Commission on Protecting and Reducing Government Secrecy* (Washington, D.C.: Government Printing Office, 1997), 50–51. See also Arvin S. Quist, *Security Classification of Information, Volume 1, Introduction, History, and Adverse Impacts* (Oak Ridge, Tenn.: Oak Ridge Classification Associates, LLC, 2002), chapter 6; Timothy L. Ericson, "Building Our Own 'Iron Curtain': The Emergence of Secrecy in American Government," *American Archivist* 68, no. 1, Spring/Summer 2005: 18–52; and Representative Lee Hamilton's remarks at the Information Security Oversight Office's October 2005 public meeting on declassification, available at <http://www.fas.org/sgp/eprint/hamilton.pdf>, accessed 12 February 2007.

³ Both Ericson's "Building Our Own 'Iron Curtain': The Emergence of Secrecy in American Government" and Quist's *Security Classification of Information, Volume 1* contain excellent accounts of the history of federal secrecy policies.

⁴ The standard National Archives and Records Administration conversion formula for textual records is 1 cubic foot equals 2,500 pages. The conversion formula for nontextual holdings is 1 roll of microfilm equals 2,600 pages, 1 minute of audio tape equals 2.5 pages, 1 linear foot of film equals 1 page. *Report to the President: An Assessment of Declassification in the Executive Branch* (Information Security Oversight Office, 21 September 2005) 2, available at <http://www.archives.gov/isoo/reports/2005-declassification-report.pdf>, accessed 21 February 2006.

in 1940. This order gave presidential approval to what the army and navy were already doing in classifying information concerning “vital military and naval installations or equipment” as Secret, Confidential, or Restricted. Executive Order 9182 of 1942 expanded the scope of classified information to include that “relating to national defense requiring special provision for safeguarding.” Subsequent orders retained this broad definition of what needed to be classified. President Harry Truman’s E.O. 10104 in 1950 added the new and higher classification level of Top Secret. Executive Order 12065, signed by President Jimmy Carter in 1978, began to set forth more specific areas of information that required classification. All the orders preserved the classification of information by their predecessors.⁵

In March 2003, President George W. Bush signed E.O. 13292, the latest executive order at this writing relating to National Security Information (NSI). It mandates that newly generated information in the following eight areas be classified:

1. military plans, weapons systems, or operations
2. foreign government information
3. intelligence activities (including special activities), intelligence sources, or cryptology
4. foreign relations or foreign activities of the United States, including confidential sources
5. scientific, technological, or economic matters relating to the national security, which includes defense against transnational terrorism
6. United States Government programs for safeguarding nuclear materials or facilities
7. vulnerabilities or capabilities of systems, installations, infrastructure, projects, plans, or protection services relating to the national security, which includes defense against transnational terrorism or
8. weapons of mass destruction⁶

The second type of classified information concerns atomic energy and nuclear weapons. The original authority in this area was the Atomic Energy Act of 1946, superseded by the Atomic Energy Act of 1954. This legislation mandates information be classified as Restricted Data (RD) if it concerns 1) the design, manufacture, or utilization of atomic weapons, 2) the production of fissionable material, or 3) the use of fissionable material to produce power. It also requires information be classified as Formerly Restricted Data (FRD) if it primarily concerns the military utilization of atomic weapons. A 1981 amendment added another kind of protected information, Unclassified Controlled

⁵ Quist, *Security Classification of Information*, chapter 3.

⁶ Section 1.4, E.O. 13292.

Nuclear Information, covering certain safeguards and security measures of nuclear facilities.⁷ Any information that is classified RD or FRD is also classified as NSI, but not vice versa.

The third category of classified information is Sensitive Compartmented Information (SCI), which is information “concerning or derived from intelligence sources, methods, or analytical processes, which is required to be handled within formal access control systems established by the Director of Central Intelligence.”⁸ It is designated by codewords, which themselves are classified. The authorities for SCI are National Security Decision Directives, National Security Council Intelligence Directives, Director of Central Intelligence Directives, and Department of Defense Directives.⁹ Any information classified as SCI is also classified as NSI, but not vice versa.

	National Security Information (NSI)	Restricted Data (RD) and Formerly Restricted Data (FRD)	Sensitive Compartmented Information (SCI)
Authority	Series of executive orders dating from World War II	Atomic Energy Act of 1954	National Security Council Intelligence Directives, etc.
Definition	Eight grounds under the current executive order, from “military plans, weapons systems, or operations” to “foreign government information”	RD is primarily nuclear weapons design information; FRD concerns the military utilization of nuclear weapons.	Information about or produced from intelligence sources or methods, which is required to be handled in special security control systems
Markings	Top Secret, Secret, or Confidential	Restricted Data or Formerly Restricted Data	Code words such as TALENT- KEYHOLE or BYEMAN (most of which are still classified)
Subject to the automatic/ systematic declassification review program?	yes	no	yes

FIGURE 1. Types of Classified Information

⁷ Technically, FRD is information removed from the RD category, but that is still protected as NSI. *A Review of the Department of Energy Classification Policy and Practice* (Washington, D.C.: National Academy Press, 1995), 23–29.

⁸ Director of Central Intelligence Directive 1/19 — Security Policy for Sensitive Compartmented Information, available at <http://www.fas.org/irp/offdocs/dcid1-19.html>, accessed 27 March 2006.

⁹ Jeffrey Richelson, *The U.S. Intelligence Community* (Boulder, Colo.: Westview Press, 1999), 425–29. Several codewords have been declassified in recent years, for example, in 1995, TALENT-KEYHOLE covering imagery from certain overhead platforms.

TWO STEPS FORWARD, ONE STEP BACK: MIXED PROGRESS
UNDER THE AUTOMATIC / SYSTEMATIC DECLASSIFICATION
REVIEW PROGRAM

1. TO		READS TRANSMITTAL AND RECEIPT		Complete and send original and two copies of this form to the appropriate Federal Records Center for approval prior to shipment of records. See specific instructions on reverse.		PAGE 1	OF 1	PAGES 1
1. TO		Federal Archives and Records Center General Services Administration		5. FROM (Enter the name and complete mailing address of the office retiring the records. The signed receipt of this form will be sent to this address.)		326-81-0031		
2. AGENCY AUTHORITY		Accession Section Suitland, Maryland 20409		DATE		2-23-81		
3. AGENCY CONTACT		TRANSMITTING AGENCY OFFICIAL (Signature and title) C Neil Sherman Director Division of Library Services, AD-44		DATE		APR 28 1981		
4. RECORDS CENTER RECEIPT		RECORDS RECEIVED BY (Signature and title) Dorothy Evans Chief, Accession & Disposal Branch		DATE		APR 28 1981		
5. RECORDS DATA		ACCESSION NUMBER		SERIES DESCRIPTION (With inclusive dates of records)		COMPLETED BY RECORDS CENTER		
RG		FY		VOLUME (cu. ft.)		DISPOSAL AUTHORITY (Schedule and item number)		
(a)		(b)		(c)		(d)		
326 81		31		6		Q B-9, 27A Now ERS-16, 5.a.		
1		thru		6		Perm.		
6754		2964		2965		NOTE: Access authorized to DOE personnel only. Records contain secret restricted data.		
"		"		2966		LEGATION: 02/85:22-3-5 SAN		
"		"		2967		VERIFIED DATE		
"		"		2968		Schedule		
"		"		2969		Believing		
Job No.		Boxes		SIGNATURE		MAR 1 1981		
6754		2964		Dorothy Evans		FEB 26 1981		
"		2965		Dorothy Evans		Standard Form 135 (Rev. 6-76)		
"		2966		Dorothy Evans		Prescribed by GSA		
"		2967		Dorothy Evans		FPMR (41 CFR) 101-11.4		
"		2968		Dorothy Evans				
"		2969		Dorothy Evans				

This Standard Form-135 describes an accession of Secret / Restricted Data and below 1946-1965 subject correspondence files of the Division of Military Application, Atomic Energy Commission. It is in Record Group 326 (Atomic Energy Commission) at the Federal Records Center in Suitland, Maryland. These records are not subject to the automatic / systematic declassification review program because they contain Restricted Data. The only way the public can try to access them is through a FOIA or MDR request.

A Brief History of Declassification Procedures

Many of the executive orders on National Security Information also contained requirements for declassification or for downgrading (for example, Top Secret to Secret or Secret to Confidential). President Truman's E.O. 10290 mandated that "wherever practicable, the classifying official shall place a notation on classified material. . . that after a specified event or date. . . the material will be downgraded or declassified." It also authorized classifying authorities to downgrade or declassify security information "when circumstances no longer warrant its retention in its original classification."¹⁰ In 1953, President Dwight Eisenhower's E.O. 10501 continued these provisions.¹¹

President John Kennedy's Executive Order 10964 in 1961 required that newly classified information be marked with a downgrading or a declassification schedule. However, it exempted information provided by a foreign government or international organization, information "requiring special handling such as intelligence or cryptography," and "extremely sensitive information" that an agency head determined on an individual basis. Information that warranted "some degree of classification for an indefinite period" was automatically downgraded at twelve-year intervals but not automatically declassified. Only information falling outside these categories was automatically downgraded at three-year intervals and automatically declassified twelve years after its creation.¹²

In 1972, President Richard Nixon provided in E.O. 11652 that all newly classified information was to be automatically downgraded and then declassified in a maximum of ten years. Officials could exempt information from this provision if it was furnished confidentially by a foreign government or international organization; was classified under a statute; concerned cryptography or disclosed intelligence sources or methods; disclosed "a system, plan, installation, project or specific foreign relations matter the continued protection of which is essential to the national security"; or placed a person "in immediate jeopardy." All such exempted information and information classified under prior orders would be automatically declassified after thirty years unless the agency head determined in writing that "its continued protection is essential to national security or that its disclosure would place a person in immediate jeopardy." The order also established the completely new systematic declassification review procedure, mandating that the National Archives conduct a review of its classified holdings thirty years old and older.¹³

¹⁰ Paragraph 28, Part IV, E.O. 10290.

¹¹ Section 4, E.O. 10501.

¹² Sections 1 and 2, E.O. 10964.

¹³ Sections 5 and 7, E.O. 11652.

In 1978, President Carter mandated in E.O. 12065 that all newly classified information be automatically declassified within six years, except that agency heads and officials with Top Secret classification authority could set a date or event for automatic declassification or further review up to twenty years after the date of origin or thirty years in the case of foreign government information.

This order expanded the systematic declassification review requirement, stipulating that not only the National Archives but all agencies review their permanent classified records twenty years old and older (records with foreign government information were to be reviewed when they were thirty years old and older). Agencies had to issue guidelines specifically identifying the information that could not be automatically declassified at twenty years. The order authorized the secretary of defense to establish special procedures for the systematic review and declassification of cryptologic information and authorized the director of central intelligence to do the same for information concerning the identities of clandestine human agents. President Carter's order also created the Information Security Oversight Office (ISOO) to oversee compliance.¹⁴ ISOO is now part of the National Archives and Records Administration, or NARA, and still has this oversight responsibility. ISOO has never had any authority to impose sanctions or penalties. It can report violations to the head of the relevant agency so that officials can take corrective action. It works to educate the agencies and to ensure their compliance. Under this order's expanded systematic review requirement, a relatively large number of records was reviewed and actually declassified for the first time. For example, just in the years 1980 to 1982, over 140 million pages were reviewed for declassification and over 100 million pages were declassified.¹⁵

In 1982, however, President Ronald Reagan halted this progress with E.O. 12356. It drastically changed the rules on the length of classification, stating only that newly classified information shall have a date or event for declassification when it can be determined. Automatic declassification decisions under prior orders remained valid, but authorized officials could override them. The order eliminated the requirement that agencies, except for the National Archives, conduct systematic declassification review and dropped the general twenty-year automatic declassification provision. It again authorized the secretary of defense to create special procedures for the systematic review of cryptologic information, and it authorized the director of central intelligence to do the same for information pertaining to intelligence activities or sources and methods.¹⁶ Not surprisingly, both the amount of materials reviewed for declassification and the

¹⁴ Sections 3 and 5, E.O. 12065.

¹⁵ *Annual Report to the President, FY 1984* (Information Security Oversight Office, 1985), 16–17.

¹⁶ Sections 1 and 3, E.O. 12356.

amount actually declassified dropped significantly. Although 100 million pages were declassified in just the last three years under the Carter order, fewer than 100 million pages were declassified in the fourteen years that E.O. 12356 was in effect.¹⁷

Before President Clinton's E.O. 12958 in 1995, these executive orders and statutes were ineffective in releasing large numbers of records because they were essentially voluntary, had many exceptions, or were unevenly implemented. Furthermore, none of the provisions found in the executive orders for downgrading or declassifying National Security Information or Sensitive Compartmented Information applied to Restricted Data or Formerly Restricted Data since their declassification is governed exclusively by the Atomic Energy Act of 1954.¹⁸

Beginning in the 1990s, several statutes and executive orders declassified narrow categories of classified records. Two of the better known statutes are the President John F. Kennedy Assassination Records Collection Act of 1992, which mandated gathering and declassification review of all records concerned with the death of the president, and the Nazi War Crimes Disclosure Act of 1998, which required a similar effort with respect to records on war criminals.¹⁹ President Clinton's E.O. 12937 in 1994 declassified several tens of millions of pages of World War II and prewar records at the National Archives, and his E.O. 12951 in 1995 declassified the satellite imagery from the CORONA, LANYARD, and ARGON programs.²⁰ Additionally, in a few instances, very important but small groups of records were declassified without any formal legal requirement. Perhaps the most notable example is the VENONA translations—copies of decrypted Soviet intelligence cables from 1940 to 1948 that the National Security Agency released beginning in 1995.²¹

Two other tools give the public the vital right to request access to any kind of classified material, regardless of whether it is subject to the automatic/systematic declassification review procedures. The first is the Freedom of

¹⁷ *Annual Report to the President, FY 1996* (Information Security Oversight Office, 1997), 25.

¹⁸ The statute only requires a continuous review of RD and FRD information (conducted now by the Department of Energy) to determine what can be declassified. No mandate exists to review and declassify the records containing such information. RD and FRD records are subject to the Freedom of Information Act and Mandatory Declassification Review procedures.

¹⁹ In 2005, President Bush signed legislation extending the work of the Nazi War Crimes Disclosure Act's Interagency Working Group to March 2007 to allow it to complete the opening of Central Intelligence Agency records.

²⁰ Executive Order 12951 immediately declassified the imagery from these three programs and gave the director of central intelligence authority to declassify imagery from other obsolete film return programs. In 2003, he approved the release of most of the KH-7 satellite's imagery and all of the KH-9 satellite's mapping camera imagery. Imagery from other obsolete programs has still not been declassified but may be soon.

²¹ Copies of the decrypted cables and related documents are available at <http://www.nsa.gov/venona>, accessed 19 January 2006.

Information Act, passed in 1966 and amended several times. The second is the Mandatory Review procedure (now called Mandatory Declassification Review), originally created under President Nixon's E.O. 11652 in 1972 as an alternative to the Freedom of Information Act. However, both are designed only to review small numbers of records; they cannot be employed to review large quantities. A key difference between the two is that under Mandatory Declassification Review, agencies have to respond completely within one year. If they do not, the requester can then appeal directly to the Interagency Security Classification Appeals Panel (ISCAP), created in 1995 by President Clinton's E.O. 12958. Among other duties, ISCAP decides Mandatory Declassification Review appeals. Representatives from the Departments of State, Defense, and Justice; the Central Intelligence Agency; the National Archives; and the National Security Council sit on the panel. It does not meet regularly, but rather at the call of the chair, who is appointed by the president. In cases where response is timely but the requester believes it to be incomplete, an administrative appeal must be made before going to ISCAP. ISCAP is the last appellate authority in either case and there is no right to bring suit in Federal District Court.²² Under the Freedom of Information Act, no strict deadline exists by which the government must respond. If the requester is not satisfied with the response, an administrative appeal must first be made. After this, the requester may then file suit in Federal District Court.²³

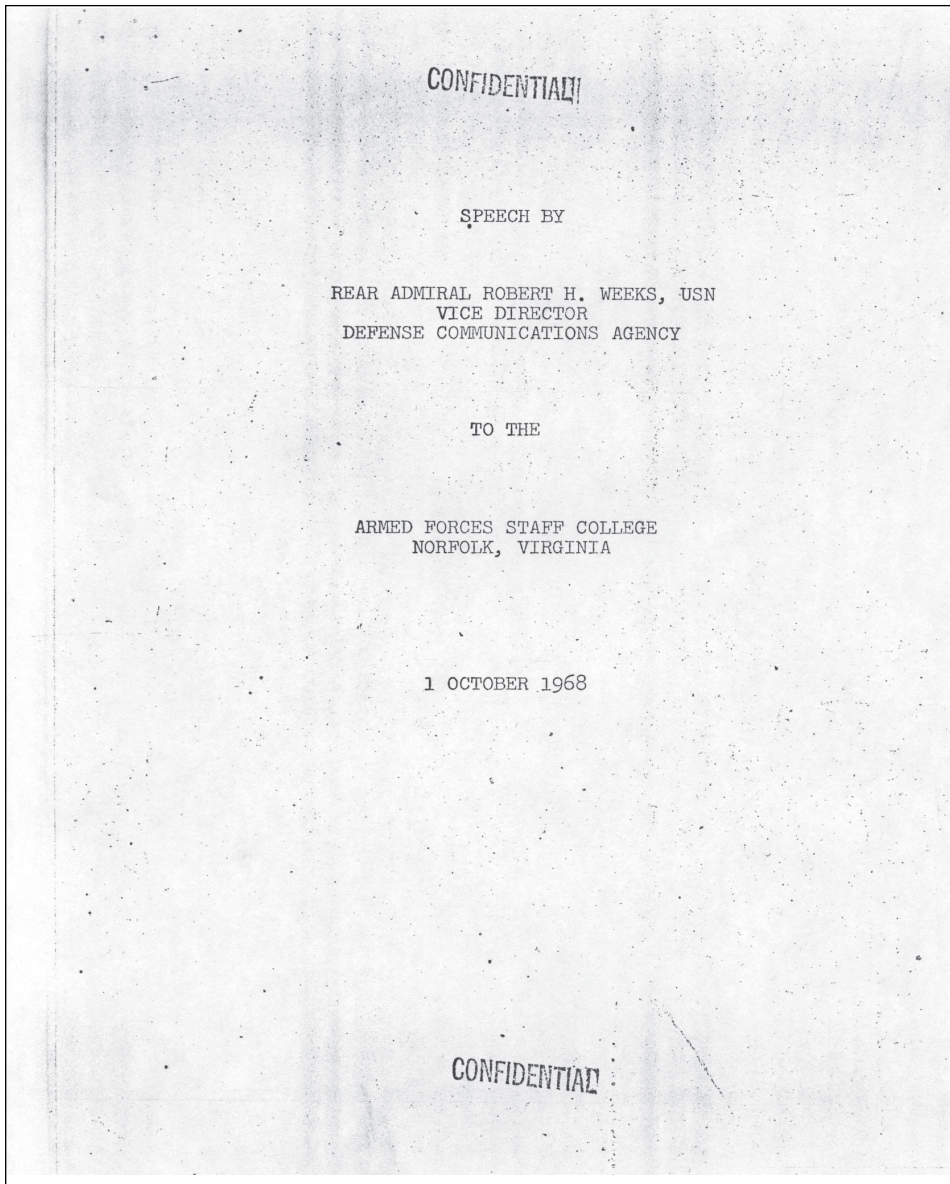
Automatic/Systematic Declassification Review Procedures under E.O. 12958 and Subsequent Modifications

In April 1995, President Clinton signed E.O. 12958, which radically changed existing declassification procedures and finally provided a real incentive for the National Archives, presidential libraries, and agencies to review their classified records. The order provided that all permanent pre-1975 classified agency records and all pre-1975 classified presidential library records would be automatically declassified in April 2000, "whether or not the records have been reviewed." Little is available about the background of the executive order. Both NARA and the agencies were involved. The Clinton administration held hearings at which the public gave its comments on the proposed order.²⁴

²² Section 3.5, E.O. 13292.

²³ The Freedom of Information Act is set forth at 5 United States Code 552.


²⁴ No reporters were present at the hearings and no transcripts were made. The press release of the signing is found at <http://clinton6.nara.gov/1995/04/1995-04-17-highlights-of-exec-order-on-classified-information.html>, accessed 6 June 2007. Most materials at the Clinton Library have not been processed.



The cover sheet of a transcribed 1 October 1968 speech on the Defense Communications System from Record Group 371 (Defense Communications Agency) at the National Archives College Park. Without the automatic/systematic declassification review program established by E.O. 12958 in 1995, this document would have remained classified indefinitely. The public could have attempted to access it only through a FOIA or MDR request.

TWO STEPS FORWARD, ONE STEP BACK: MIXED PROGRESS
UNDER THE AUTOMATIC / SYSTEMATIC DECLASSIFICATION
REVIEW PROGRAM

(File)



CONFIDENTIAL
DEPARTMENT OF DEFENSE
DEFENSE COMMUNICATIONS AGENCY
DEFENSE AREA COMMUNICATIONS CONTROL CENTER, PACIFIC
NAVY NO. 509, FLEET POST OFFICE, SAN FRANCISCO, CALIFORNIA

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ADDRESS REPLY TO:
THE CHIEF,
DEFENSE AREA COMMUNICATIONS
CONTROL CENTER, PACIFIC

4800.5/P300/jmm

15 April 1963

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CONFIDENTIAL

DOWNGRADED AT 3 YEAR
INTERVALS; DECLASSIFIED AFTER
12 YEARS. DOD DIR 5200.10

The title page of an April 1963 study on Defense Communications Service high-frequency radio requirements in the Pacific Command from Record Group 371 (Defense Communications Agency) at the National Archives College Park. It was supposed to be declassified in 1975 per a Department of Defense downgrading directive, but was not. Without the automatic/systematic declassification review program established by E.O. 12958, the study would have remained classified indefinitely. The public could have attempted to access it only through a FOIA or MDR request.

Two exemptions to this sweeping mandate kept some records classified. The first were records examined and found to contain information that still warranted classification under the current guidelines. Second, the White House could grant exemptions from automatic declassification for designated file series.²⁵ Although the order uses the term “exemption,” in fact it means a delay in automatic declassification for a specific number of years.

Agencies could exempt the following types of information from automatic declassification during actual review or through a file series exemption:

1. information concerning the identity of a confidential human source, the application of an intelligence source or method, or the identity of a human intelligence source when the unauthorized disclosure of that source would clearly and demonstrably damage the national security;
2. information that would assist in the development or use of weapons of mass destruction;
3. information that would impair U.S. cryptologic systems or activities;
4. information that would impair the application of state-of-the-art technology within a U.S. weapons system;
5. information on actual U.S. military war plans that remain in effect;
6. information that would seriously and demonstrably impair relations with a foreign government or ongoing diplomatic activities;
7. information that would clearly and demonstrably impair the ability to protect the president, vice president, and others;
8. information that would seriously and demonstrably impair current national security emergency preparedness plans; and
9. information that would violate a statute, treaty, or international agreement.

Agencies were required to apply for the file series exemptions no later than October 1995. They had to include an explanation of why the information in each file series almost invariably fell within one or more of the above nine categories and why the information must remain classified for a longer period of time. The agencies also had to provide a specific date or event for declassification (except for information on the identity of a confidential human source).

At least six months before automatic declassification, agencies could also submit for approval to the Interagency Security Classification Appeals Panel declassification guides identifying specific information not covered by the nine categories that should also be exempted from automatic declassification. The guides had to contain the same justifications and a specific date or event for

²⁵ “File series” is defined in Section 6.1 of the order as “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.”

declassification as proposed file series exemptions. All permanent post-1975 classified agency records and classified presidential library records were to be automatically declassified twenty-five years after their creation unless they were covered by a file series exemption or, after actual review, were found to contain exempted information.²⁶

Executive Order 12958 also required once again that all agencies and the National Archives conduct systematic declassification review of their permanent classified records and of their classified records twenty-five years old and older in presidential libraries. As ISOO has often noted, automatic declassification and systematic declassification review are so interrelated that each agency and NARA operate a single program.²⁷ The order retained the provision authorizing the secretary of defense to establish procedures for the review of cryptologic information and the director of central intelligence to do the same for review of information concerning intelligence activities or sources and methods.

The order also included an entirely new requirement that "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."²⁸ This provision was designed to encourage the transfer of agency records to the National Archives shortly after their declassification and thus ensure public access to them as quickly as possible.

Some agencies moved quickly to start their review programs. They did so because of a serious commitment to carrying out the mandate, because it was good public relations, and because nothing guaranteed that an extension of the automatic declassification date would be given. Many agencies, however, were late in starting their review programs. The president did not anticipate that agencies would perform a time-consuming, line-by-line examination of all their subject records. He believed the agencies would employ risk management principles and faster procedures such as sampling for many of them. However, virtually every agency performed line-by-line reviews of all their materials from the outset, regardless of their classification level and date.²⁹

²⁶ Section 3.4, E.O. 12958.

²⁷ See, for example, *Annual Report to the President, FY 2005* (Information Security Oversight Office, 2006), 14. Although there is no requirement to consolidate, the agencies and NARA have established one program because there is no reason to have two.

²⁸ Sections 3.4 and 3.5, E.O. 12958.

²⁹ Statement on Signing the Executive Order on Classified National Security Information April 17, 1995, is found at <http://frwebgate5.access.gpo.gov/cgi-bin/waisgate.cgi?WAISdocID=156336225073+0+2+0&WASAction=retrieve>, accessed 6 June 2007. The *Report of the Commission on Protecting and Reducing Government Secrecy* mentions that the president's "stated intent" on signing the E.O. was that it would result in "large-scale declassification that won't be dependent on the availability of individuals to conduct a line-by-line review."

As a result, most agencies realized that they would not complete their work on the pre-1975 records by April 2000, so, in November 1999, President Clinton signed E.O. 13142. It extended the original automatic declassification date to October 2001 for records that had the equity of one agency and to April 2003 for records that contained the equities of more than one agency or had information concerning intelligence sources or methods.³⁰

Few organizations could meet these new deadlines either, and, as a result, in March 2003 President Bush signed E.O. 13292. It established 31 December 2006 as the new date for the automatic declassification of all permanent pre-1981 classified agency records and all pre-1981 classified presidential library records. All post-1981 records will be automatically declassified at the end of December of the year in which they turn twenty-five years old. Three exceptions apply to these general rules. First, records examined and determined to have exempted information, or second, records in a file series for which the White House has granted an exemption from automatic declassification are not subject to automatic declassification at twenty-five years. Third, the order created four new grounds for delay:

1. records “within an integral file block” are only subject to automatic declassification twenty-five years after the date of the most recent document therein;³¹
2. “microforms, motion pictures, videotapes, or comparable media” receive an additional five years;
3. records that have the equities of more than one agency get an extra three years; and
4. records that are “inadvertently not reviewed” before the end of 2006 receive an additional three years.³²

These four new grounds are cumulative. As an example, microfilm from 1962 that contains multiple equities will not be subject to automatic declassification until the end of 2014.³³

³⁰ Section 2, E.O. 13142. An agency’s jurisdiction over classified information in a record is called *equity*. A record has either the equity of a single agency or equities of multiple agencies. With few exceptions, no agency has the training or authority to declassify the equities of other agencies. All the relevant agencies must declassify their equities in a document for the document to be released in full. As an example, only the air force can declassify information on its electronic countermeasures. If the navy has a record containing such information, it has to be referred to the air force for review of its equities.

³¹ The following illustrates how the “integral file block” extension works. Record Group 330 (Office of the Secretary of Defense) at the Federal Records Center in Suitland, Maryland, contains a collection of Secret foreign military rights affairs files dating from 1944 to 1991. They are not subject to automatic declassification until 2016.

³² Sections 3.3 and 3.4, E.O. 13292.

³³ National Archives and Records Administration, *Fiscal Year 2008 Annual Performance Plan* (2007), II-22, available at <http://www.archives.gov/about/plans-reports/performance-plan/2008/index.html>, accessed 7 February 2007.

Executive Order 13292 retains intact the nine grounds for information to be exempted from automatic declassification that were set forth by President Clinton in E.O. 12958. The order also continues the right of agencies to submit for approval to ISCAP declassification guides identifying information beyond the nine grounds that require exemption, and it gives the agencies another opportunity to submit file series proposed for exemption to the White House. It also keeps the provision encouraging agencies to employ records management practices that will make declassified records available to the public at the earliest possible time.³⁴

**Classified Records Not Subject to the
Automatic/Systematic Declassification
Review Program**

As surprising as it may seem, automatic/systematic declassification review procedures apply only to a small portion of classified records. First, they cover only National Security Information and Sensitive Compartmented Information and not information classified under the Atomic Energy Act; that is, Restricted Data (RD) or Formerly Restricted Data (FRD). Although no attempt has been made to inventory the number of RD and FRD records throughout the government, the total must be massive. In 1995, the Department of Energy estimated that it held about 8 billion pages of textual records and a huge but unknown quantity of nontextual records, but it gave no information about their classification status.³⁵ Considering that its records date back to the atomic bomb project in World War II and that virtually all of its classified records contain RD or FRD, the Department of Energy probably holds at least 2 or 3 billion pages of RD and FRD records and a large volume of nontextual RD and FRD records. Additionally, a number of other organizations—the army, air force, navy, Office of the Secretary of Defense, Joint Chiefs of Staff, Defense Threat Reduction Agency, Defense Intelligence Agency, Central Intelligence Agency, Federal Bureau of Investigation, Department of Justice, National Security Council, National Aeronautics and Space Administration, and selected unified or specified combatant commands—together hold a huge volume of RD and FRD materials that probably total around another billion pages.

Second, the automatic/systematic declassification review provisions only apply to agency records that have been appraised as permanent under a records schedule approved by NARA. Records that are unappraised or appraised as

³⁴ Section 3.3, E.O. 13292.

³⁵ *Human Radiation Experiments: The Department of Energy Roadmap to the Story and the Records* (U.S. Department of Energy, February 1995), 7.

TRANSFERS REQUEST
FORM 7-55 (Rev. 7-55)

Box # 16 from CNO - 10/19/56 Job # 13608

TO BE FILLED IN BY NAVAL RECORDS MANAGEMENT CENTER

NUMBER OF BOXES OR CONTAINERS

17 Boxes

LOG NUMBER

13,608

PICKED UP BY

Gordon

DATE

8/9/53

LOCATION

1/27: 17-19

DATE:

8 August 1956

TO: Director, Naval Records Management Center, Alexandria, Virginia

FROM: NAVAL OPERATIONS (OPNAV)

Guided Missile Division (Op-11)

SECRETARIAT (Op-515)

LOCATION OF RECORDS

Pentagon

NAME OF CUSTODIAN

Mrs. Ann Bruce

CLASSIFICATION

TOP SECRET

CONFIDENTIAL

SECRET

UNCLASSIFIED

ITEM NO.

1 thru 17

QUANTITY (in cubic feet)

17

PERIOD COVERED BY RECORDS

1945 thru 1951 (JAN-JUN)

DESCRIPTION

GENERAL SUBJECT FILES FOR GUIDED MISSILES DIVISION SECRETARIAT. (Filed alphabetically by file folders)

(See Inventory List Attached.)

PROPOSED DISPOSITION DATE

9/1/57

PROPOSED EVENTUAL DISPOSITION

Destruction 7.18-#112 by burning.

IF ON RECORDS MANAGEMENT SCHEDULE IDENTIFY BY PAGE AND ITEM NO.

FILING UNIT

8 drawers (legal size)

SQ. FT. OF FLOOR SPACE OCCUPIED BY RECORDS

none

SIGNATURE (Bureau or Activity Records Officer, if there is one, otherwise Division Head)

R. W. THOMPSON, CAPT USN

INSTRUCTION: Prepare in quadruplicate. Submit original and one copy to Director, Naval Records Management Center. Retain other copies for file.

TITLE OF POSITION

ASSISTANT DIRECTOR, Guided Missile Division

(See reverse side for instructions for filling out this Request)

DATE-TYPE PRINT, WASH., D.C.

The first page of a form describing an accession of Secret and below navy guided missile records from 1945 to 1951 in Record Group 38 (Chief of Naval Operations) at the Federal Records Center in Suitland, Maryland. Although the navy transferred the records to the Federal Records Center system in 1956 with a proposed destruction date the following year, the records were not destroyed and are currently pending reappraisal. They are not subject to the automatic/systematic declassification review program and are not eligible for transfer to the National Archives unless they are appraised as permanent. Although no inventory has ever been done, the quantity of unappraised, temporary, and pending reappraisal classified records not subject to the program is much larger than the quantity of permanent classified records that is. Records in these three appraisal categories that are eventually appraised as permanent fall under the purview of the executive orders twenty-five years after their creation or five years after they were so appraised, whichever is later.

temporary (eligible for destruction after a set period of time under an approved records schedule) are not covered by the procedures. A third category of records not covered by the procedures are records that were once appraised as temporary or permanent but are now pending reappraisal. Federal Records Centers code these records in their computer-generated inventories as “contingent reappraisal pending” or “deferred reappraisal pending.” Unappraised or pending reappraisal records that are eventually appraised as permanent become subject to the procedures twenty-five years after their creation or five years after they were appraised as permanent, whichever is later.³⁶ For example, Record Group 38 (Chief of Naval Operations) at the Federal Records Center in Suitland contains a collection of Secret guided missile records dating from 1944 to 1951 that is currently pending reappraisal. If these records were appraised as permanent in 2010, they would not be subject to automatic declassification until 2015.

How many unappraised, temporary, and pending reappraisal classified materials exist? Only Federal Records Centers currently have data on holdings in these categories. For example, the Federal Records Center in Suitland has approximately 1.62 billion pages of classified records from numerous organizations, of which slightly over a billion are permanent, 61 million are unappraised, 393 million are temporary, and 164 million are pending reappraisal.³⁷

Unfortunately, no figures are available for the volumes of unappraised, temporary, and pending reappraisal classified records held by the agencies. Based on the huge quantities of records in all appraisal categories at just a few agencies, however, the number of unappraised, temporary, and pending reappraisal classified records across the entire government no doubt totals many billions of pages and thousands of cubic feet of nontextual records.³⁸ As noted above, the Department of Energy estimated in 1995 that it held about 8 billion pages of records and a large but unknown quantity of nontextual records. It did not provide a breakdown of the classification or appraisal status of those records.³⁹ The Federal Bureau of Investigation in 1998 had custody of the staggering total of about 16 billion pages (of which at least 4 billion were permanent) and a huge but unknown quantity of nontextual records. No information was available on the total of classified records or the quantities in other appraisal

³⁶ 32 Code of Federal Regulations, Section 2001.30 (g).

³⁷ These numbers are from the O-1 list at the Federal Records Center in Suitland. It should be noted that the Central Intelligence Agency, the National Reconnaissance Office, and the National Security Agency do not store any of their records at this or any other Federal Records Center. Other agencies—including the Federal Bureau of Investigation, the Defense Intelligence Agency, and the National Geospatial Intelligence Agency—store very few records in Federal Records Centers.

³⁸ As a comparison, in 2003 all the National Archives and presidential libraries held only a little over 7 billion pages of textual records and 169,000 cubic feet of nontextual records. *Annual Report 2003* (National Archives and Records Administration, 2004), 23.

³⁹ *Human Radiation Experiments*, 7.

categories.⁴⁰ As of 1986 (the last year an agency-wide inventory was conducted), the Central Intelligence Agency held almost 912 million pages and 30,000 cubic feet of nontextual records. The report containing this information did not provide a breakdown of their classification or appraisal status.⁴¹

Declassification Actions to Date

Records Automatically Declassified or Reviewed

The progress under E.O. 12958 and the subsequent orders has unfortunately been mixed. The State Department and the National Archives expanded existing systematic declassification review programs, and the air force quickly established an active program.⁴² Many of the other forty-six agencies with records subject to the order took several years to establish their automatic/systematic declassification review programs.⁴³

The only records known to have been automatically declassified on 31 December 2006 were 270 million pages from the Federal Bureau of Investigation, although it provided no information on what records these are, their date range, or their classification level. The agency stated that these 270 million pages would not be “systematically reviewed” before their transfer to the National Archives or during a Freedom of Information Act review, but before public release they must be examined for Privacy Act information and other sensitive types of information.⁴⁴ Based on the available evidence, it appears that NARA and all other agencies except the Federal Bureau of Investigation reviewed all of their subject pre-1981 records by the end of 2006, and the materials were either declassified, exempted (containing information that still merits classification), excluded

⁴⁰ Assistant FBI Director John Collingwood was quoted in George Lardner’s “The FBI Won Exception to Presidential Order Declassifying Secrets,” *The Washington Post*, 19 July 1998, saying that the agency held 6.5 million cubic feet of records, of which perhaps one-half was paper. This translates to 8 billion pages and 3.2 million cubic feet of nontextual records. The numbers used in this article—a total of 16 billion pages, of which 4 billion are permanent, and an unknown quantity of nontextual records—come from the author’s conversation with the agency’s records management office in 1997.

⁴¹ “Annual Report of Records Holdings for 1986,” 26 May 1987, and associated documents. The author obtained these materials in October 2002 pursuant to a Mandatory Declassification Review request filed earlier that year.

⁴² The State Department initiated its systematic declassification review program in 1992 pursuant to the Foreign Relations Authorization Act, FY 2002 and 2003 (22 United States Code, Section 4351, et. seq.), which required it to begin reviewing all of its permanent thirty-year-old and older classified records. The National Archives had an ongoing systematic declassification review program under E.O. 12356.

⁴³ *Report to the President: An Assessment of Declassification in the Executive Branch*, 3, available at <http://www.archives.gov/isoo/reports/2005-declassification-report.pdf>, accessed 21 February 2006.

⁴⁴ Federal Bureau of Investigation presentation at the 13 November 2006 Public Interest Declassification Board meeting. Its representatives also stated that almost 3 million pages had been systematically reviewed from 1995 to 2006 prior to their transfer to the National Archives College Park.

~~TOP SECRET~~

25X1

25X1

25X1
25X1
25X1
25X1

25X1

Approved For Release 2003/08/06 : CIA-RDP80B01676R002300070052-5

237


Approved For Release 2003/05/16 : CIA-RDP79T00975A008400160001-1

TOP SECRET

25X1 25X1

20 July 1965

Copy No. C **142**



CENTRAL INTELLIGENCE BULLETIN

CURRENT INTELLIGENCE
RELATING TO NATIONAL SECURITY

STATE review(s) completed.

25X1

GROUP 1
EXCLUDED FROM AUTOMATIC DOWNGRADING
AND DECLASSIFICATION

Approved For Release 2003/05/16 : CIA-RDP79T00975A008400160001-1

TOP SECRET

The cover page of the Top Secret-Codeword version of the 20 July 1965 *Central Intelligence Bulletin*, which the CIA distributed to a limited number of senior executive branch officials. Under the automatic/systematic declassification review program, in 2003 the CIA declassified in part the cover page and body of this report that summarized key military, political, scientific, and economic developments around the world. The codewords themselves and other unknown information are redacted on the cover page. If the CIA had not redacted it, the document would have been withheld in its entirety, requiring the public to try to access it through an FOIA or MDR request. The document is part of the 11 million pages the CIA has released and placed on its CREST electronic database at the National Archives College Park. In 1999, the White House exempted 95 million pages of other CIA permanent classified records twenty-five years old and older from automatic declassification. The status of another 50 million pages is unknown.

(containing Restricted Data or Formerly Restricted Data), referred to another agency for review of its equities (and thus not subject to automatic declassification until the end of 2009), or comprised of special media (and thus not subject to automatic declassification until the end of 2011).

The National Archives, presidential libraries, and all the agencies except one are reviewing their subject records on a “pass-fail” basis.⁴⁵ “Pass-fail” means that the entire document is withheld if there is a single word that merits exemption under the nine grounds of the executive orders or Interagency Security Classification Appeals Panel–approved declassification guides. As a result, the review process moves much more quickly but fewer records are released. Only the Central Intelligence Agency is redacting, that is, blacking out information in a record that merits continued classification and releasing the remainder of the record. More records are released using redaction, but the process is considerably slower.⁴⁶

File Series Exempted from Automatic Declassification

In late 1995, sixteen agencies sought file series exemptions. Six subsequently withdrew their requests, and, in 1998, the White House approved the following exemptions:

1. Army (27 million pages or 10% of its subject records)
2. Central Intelligence Agency (94.5 million pages or 60% of its subject records)
3. Defense Intelligence Agency (26 million pages or 38% of its subject records)
4. Joint Chiefs of Staff (1.5 million pages or 17% of its subject records)
5. National Security Agency (27.6 million pages or 38% of its subject records)
6. National Security Council (65,000 pages or 15% of its subject records)
7. National Reconnaissance Office (720,000 pages or 63% of its subject records)
8. Office of the Secretary of Defense (7.3 million pages or 30% of its subject records)

⁴⁵ 32 Code of Federal Regulations, Section 2001.30(n) provides that “Agencies are encouraged but are not required to redact documents that contain information that is exempt from automatic declassification. . . .”

⁴⁶ Among the reasons pass-fail is faster is that no copies of the original documents have to be made. Blacking out under the redaction process is done on copies, of course, and not on original documents. A review of records the Central Intelligence Agency has released and placed on the CREST (CIA Records Search Tool) electronic database at the National Archives College Park illustrates that if the agency were employing the pass-fail standard, very few records would be released. A huge percentage of the materials on this database have information redacted.

9. President's Foreign Intelligence Advisory Board (77,500 pages or 48% of its subject records)
10. State Department (1.6 million pages or 3.8% of its subject records)⁴⁷

In 2005, the White House granted a file series exemption to a Department of Defense component for Special Access Program records, delaying automatic declassification for forty years from their date of origin.⁴⁸ Several unknown agencies also received file series exemptions in 2006.⁴⁹

Only three agencies released their file series exemption documents to the public in whole or part by the end of 2006. The public cannot access any of the others. Nineteen of the fifty-four permanent National Reconnaissance Office file series under its records schedule were given an extension of "50 years from date of origin or when a Mandatory Declassification Review is authorized by the President or the Director of Central Intelligence (DCI)."⁵⁰ Three Defense Intelligence Agency file series received an extension of twenty-five years, six file series fifty years "from origination of document," and one files series on human sources had no date or event specified.⁵¹ The State Department obtained an extension of up to fifty years for documents withheld during the systematic declassification review of its Central Files and the same period for its Bureau of Intelligence and Research file series "that consist principally of information supplied to State by other intelligence agencies."⁵² The Central Intelligence Agency refused to release any portion of its exemption.⁵³

⁴⁷ *Annual Report to the President, FY 1998* (Information Security Oversight Office, 1999), 5.

⁴⁸ *Annual Report to the President, FY 2005* (Information Security Oversight Office, 2006), 14. This report does not identify the component or give the quantity or date range of the exempted records, but does describe them as Special Access Program materials whose automatic declassification is delayed forty years after their date of origin. "Special Access Program" is defined in Section 6.1 of E.O. 13292 as "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."

⁴⁹ ISOO staff statements at several Public Interest Declassification Board meetings in the fall of 2006. ISOO did not identify the agencies receiving the exemptions or describe the types of records, their quantities, or the number of years automatic declassification will be delayed.

⁵⁰ "NRO File Series Exemption Strategy and Plan," October 1995 (revised January 1998), which the author received from the National Reconnaissance Office in June 2005.

⁵¹ Glynn T. Davis, Executive Secretary, National Security Council, to Executive Secretary, Defense Intelligence Agency, 9 March 1999, which the author received from the Defense Intelligence Agency in October 2005.

⁵² Andrew J. Winter, Acting Assistant Secretary of State for Administration, to Mr. Garfinkel, 4 February 1998, which the author received from the Department of State in May 2005.

⁵³ In late 2004, the author filed Freedom of Information Act requests with eight agencies for the files series exemptions they received in 1998. Because the National Security Council and the President's Foreign Intelligence Advisory Board do not accept declassification requests, the author wrote them asking that they voluntarily produce their exemptions. The two organizations had not responded by the end of 2006. The Defense Intelligence Agency, National Reconnaissance Office, and Department of State furnished the exemption documents in 2005. In September 2006, the Central Intelligence Agency refused to release any portion of its exemption (the author is appealing). The author's requests with the army, Office of the Secretary of Defense, Joint Chiefs of Staff, and National Security Agency are still pending.

The most comprehensive file series exemption, however, was granted in a little-publicized October 1995 agreement signed by the directors of ISOO and the Federal Bureau of Investigation. It permanently exempted all of that agency's records from automatic declassification on the basis that their release would "almost invariably violate the Privacy Act of 1974."⁵⁴ Significantly, the agency stated in November 2006 that it is no longer relying on the exemption. This decision was made after a preliminary examination of all of its pre-1981 subject records revealed that a blanket exemption was unnecessary and that it apparently received a much narrower file series exemption in 2006.⁵⁵

Measuring Progress

Important measures of progress under the automatic/systematic declassification review procedures are the number of records reviewed and the results. Agencies and NARA send to ISOO every year the quantities of "declassified pages" and, beginning in 2004, the quantities of pages reviewed as well.⁵⁶ ISOO publishes them in its annual reports. In late 2005, it stated there were approximately 1.9 billion pages of permanent pre-1981 classified agency records and 8 million pages of pre-1981 classified presidential library records broken down as follows:

1. 1.6 billion pages subject to automatic declassification at the end of 2006, of which 1.5 billion were reviewed from 1995 to 2005 and 1.1 billion actually declassified (leaving 100 million pages to be reviewed by the end of 2006)
2. 174 million pages of special media subject to automatic declassification at the end of 2011
3. 138 million pages of multiple equity records to be referred to one or more other agencies and that are subject to automatic declassification at the end of 2009⁵⁷

These numbers do not include the nearly 190 million pages exempted by the White House in 1998 or the unknown number of records covered by the exemptions granted in 2005 and 2006. At the very least, however, approximately 2.1 billion pages of pre-1981 classified presidential library records

⁵⁴ "FBI Won Exception to Presidential Order Declassifying Secrets."

⁵⁵ Federal Bureau of Investigation presentation at the 13 November 2006 Public Interest Declassification Board meeting.

⁵⁶ Until 1996, ISOO reported both the pages examined and the pages actually declassified. For unknown reasons, it only reported "declassified" pages from 1996 to 2003. Beginning in 2004, ISOO resumed reporting both figures.

⁵⁷ *Report to the President: An Assessment of Declassification in the Executive Branch*, 2–4; *Annual Report to the President, FY 2005*, 16–19; *National Archives and Records Administration Report on Declassification Challenges*, 1.

and permanent pre-1981 classified agency records were known to exist as of October 2005.

More informative are the detailed numbers for each individual agency set forth in its Declassification Plans submitted to ISOO beginning in 2004 or reported elsewhere. Unfortunately, the public now has access to only eighteen of the plans.⁵⁸ At times these quantities conflict with those given for the agency in question in the annual ISOO reports. As it is not possible to reconcile them at this point, there are no definitive numbers. For example, the 1995 to 2005 ISOO reports state that the army declassified 85 million pages. In its January 2006 Declassification Plan, the army estimated that of its 264 million pages of permanent pre-1981 classified textual and nontextual records, it has or will take the following actions:

1. declassify 171 million;
2. exempt 25 million after actual review (they contain information that still merits classification);
3. exclude 30 million (they contain Restricted Data or Formerly Restricted Data);
4. receive 29 million in referrals from other agencies that it must review by the end of 2009;
5. refer 35 million to other agencies; and
6. review 35 million pages of special media by the end of 2011.⁵⁹

While it is certainly important to get accurate numbers of documents examined, equally valuable would be data on exactly what records have been reviewed, their location, and, if they are not at the National Archives, the plans to transfer them. Regrettably, no attempt has ever been made to provide this information to the public.

Accessibility Problems at the National Archives and the Presidential Libraries

Another significant measure of progress is how many of the records actually declassified are accessible to the public. For records already at the presidential libraries and agency records currently at the National Archives or transferred there, additional review is required before the public can access them. First, the Department of Energy has the mandate to re-review them to prevent the inadvertent release of Restricted Data and Formerly Restricted Data, so it must either

⁵⁸ The eighteen Declassification Plans are available at <http://www.fas.org/sgp/isoo/declass/index.html>, accessed 18 July 2006.

⁵⁹ "Department of the Army 2006 Declassification Plan for Section 3.3. of Executive Order 12958, as amended," 13 January 2006, available at <http://www.fas.org/sgp/isoo/declass/index.html>, accessed 18 July 2006.

do so or determine that re-review is unnecessary.⁶⁰ Second, before the records are opened to the public at the National Archives and the presidential libraries, staff must process them: create a finding aid, perform initial preservation work, forward documents tabbed for referral to the proper agencies for their review, withdraw the still-classified records containing exempt or excluded information, screen for information protected by the Privacy Act and other authorities, create a parallel file in the classified vaults for all withdrawn documents, prepare and place withdrawal notices in the files for each of these documents, label the box indicating that the remaining records are declassified and publicly accessible, and then finally transfer the box to an unclassified vault and enter the location in various databases.⁶¹ In short, a series of time-consuming and labor-intensive actions must be taken before declassified records become publicly available.

The backlog of materials subject to Department of Energy re-review and processing at the National Archives at College Park is huge and constantly growing as more records are transferred to the facility every year. At the present time, 450 million “declassified” pages must undergo these procedures before the public can access them. At least 75 million pages are referrals and an unknown number of others have been exempted or excluded and thus have to be withdrawn.⁶² As of January 2007, the Interagency Referral Center at College Park had completed action on 11 million pages with another 9 million pages pending.⁶³ NARA has not received any additional staff to perform this massive task. It is forced to reassign many of its existing personnel, resulting, of course, in losses to other important projects.

An examination of Record Group 330 (Office of the Secretary of Defense) demonstrates the scope of the problem. This record group has about 27 million pages of originally unclassified and declassified records currently accessible by the public. Some 17 million pages of classified records have presumably been reviewed for declassification but still must be re-reviewed by the Department of Energy and processed, including almost all the classified materials accessioned since 1995. Among the many significant collections waiting these actions are

⁶⁰ The authority for this is contained in the FY 1999 National Defense Authorization Act (Section 3161, Public Law 105-261), and the plan developed to implement it is commonly referred to as the Kyl Plan. For details on the implementation, see *Special Historical Records Review Plan (Supplement) (Public Laws 105-261 and 106-65)*, 1 March 2000, available at <http://www.fas.org/sgp/othergov/doeplan.html>, accessed 22 February 2006.

⁶¹ *Fiscal Year 2008 Annual Performance Plan*, II-20.

⁶² *Audit Report, Withdrawal of Records from Public Access at the National Archives and Records Administration for Classification Purposes* (Information Security Oversight Office, 2006), 22, available at <http://www.archives.gov/isoo/reports/2006-audit-report.pdf>, accessed 5 September 2006.

⁶³ NARA presentation at the February 2007 Public Interest Declassification Board meeting.

1. Top Secret Secretary of Defense Louis Johnson files, 1949–50;
2. Top Secret Secretary of Defense George Marshall files, 1950–51;
3. Top Secret Secretary of Defense Robert Lovett files, 1951–53;
4. Top Secret Secretary of Defense Charles Wilson files, 1953–57;
5. Top Secret and below Secretary of Defense and Deputy Secretary of Defense files, 1956–63;
6. Top Secret Vietnam Task Force records, 1940–72; and
7. Top Secret Geneva Convention files, 1949–72.⁶⁴

Access to newly declassified records located at Federal Records Centers or agencies is further complicated because the records must first be transferred to the National Archives. For all practical purposes, this means the National Archives in College Park, Maryland, since most classified records are located in the Washington, D.C., area. The retention periods in NARA-approved records schedules govern when an agency's permanent records are first eligible for transfer to the National Archives. As noted above, both E.O. 12958 and E.O. 13292 contain language encouraging agencies to adopt records management practices that will ensure public access to materials at the time of their automatic declassification, but these provisions are voluntary.

Unfortunately, every known records schedule applicable to permanent classified records has a retention period of at least thirty years, and many have longer periods. For example, the Office of the Secretary of Defense schedule has a forty-year retention period for materials of high-level individuals and advisory groups; the Defense Intelligence Agency schedule provides a forty-year retention period for finished intelligence products; the Federal Bureau of Investigation schedule has a fifty-year period for many records; and the Central Intelligence Agency and the National Security Agency schedules have a fifty-year period for all of their records. To illustrate the problem, Record Group 330 (Office of the Secretary of Defense) at the Federal Records Center in Suitland has an accession of Secretary of Defense Melvin Laird's Top Secret chronological files from 1969 to 1973. They were subject to automatic declassification at the end of 2006 and presumably were reviewed before then. However, they are only first eligible for transfer to the National Archives in 2014. What legitimate reason exists for keeping the materials at the Federal Records Center until then? To its credit, the Central Intelligence Agency appears to be the only agency acting within the spirit of the executive orders as it places its declassified textual records annually on the CREST database at the National Archives, regardless of their date.

⁶⁴ This data comes from the author's review at College Park of the Record Group 330 Master Location Register inventory generated by the National Archives in late 2006.

Withdrawal of Publicly Available Records

The accessibility issue has been further complicated by the withdrawal of selected collections of publicly available records at College Park and three presidential libraries beginning in 1999 to determine whether they contain information that still merited classification, a procedure commonly referred to as “reclassification.” The National Archives, Department of Energy, Central Intelligence Agency, air force, and Federal Emergency Management Agency have each engaged in the process. As best as can be determined, the withdrawn collections total several hundreds of thousands of pages. From them at least 25,315 documents are deemed to contain information that still requires classification. In an April 2006 audit, ISOO concluded that overall, 24 percent of these documents did not meet the standards for classification under the executive orders and 12 percent were questionable. As of 2006, over 930 boxes from the withdrawn collections still needed to be reprocessed by the National Archives and placed back on the open shelves.⁶⁵

Recommendations

Several changes are needed in the automatic/systematic declassification review program. First, the agencies, National Archives, and presidential libraries should provide brief, publicly available annual summaries of the series reviewed, the record group they are in (if applicable), their location, and, for agency records, when they will be transferred to the National Archives. For example, the Office of the Secretary of Defense could report

9 c.f. of Melvin Laird’s Top Secret 1969–1973 chronological files at the Washington National Records Center, to be transferred to College Park in 2014

15 c.f. of Office of General Counsel Secret files re POWs/MIAs from 1965–1975 at College Park

Similar summaries are needed to cover all materials examined from 1995 to the present. If agencies do not produce these voluntarily, ISOO or NARA should issue a regulation mandating them.⁶⁶ Although NARA has no

⁶⁵ *Audit Report, Withdrawal of Records from Public Access at the National Archives and Records Administration for Classification Purposes*. The “reclassification” effort was discovered by an individual researcher. Thanks to his perseverance and that of other individuals, professional societies, and public interest organizations, it was brought into the limelight and strict standards are being formulated to guide the process in the future.

⁶⁶ The author presented this recommendation to the Interagency Classification Management Committee in 1997. The group, which was apparently disbanded a few years later, neither discussed nor adopted it. Most presidential library records are not in record groups. For many records still at agencies, NARA has not determined the record group in which they will be placed.

330-77-0062

330-77-62

RECORDS TRANSMITTAL AND RECEIPT

Complete and send original and two copies of this form to the appropriate Federal Records Center for approval prior to shipment of records. See specific instructions on reverse.

1. TO (Complete the address for the appropriate records center serving your area)

2. AGENCY OR AUTHORIZATION (Enter the name and complete mailing address of the office retaining the records. The signed receipt copy of this form will be sent to this address)

3. AGENCY CONTACT (Enter the name and complete mailing address of the office retaining the records. The signed receipt copy of this form will be sent to this address)

4. RECORDS CENTER RECEIPT

Office of the Assistant Secretary of Defense (C) (A)

Room 3 A 948

The Pentagon

Washington, D. C. 20301

Washington National Records Center

Washington, D. C. 20409

TRANSFERRING AGENCY OFFICIAL (Signature and title)

DATE

MAR 1977

OSD Records Administrator

THOMAS M. LIGHT, OASD (C)

Chief, Records & Reference OK79285

RECORDS RECEIVED BY (Signature and title)

DATE

RECORDS DATA

Field Use

ACCESSION NUMBER

RG

330

77

0062

VOLUME (in 75)

(a)

(b)

(c)

(d)

15

SERIES DESCRIPTION (With inclusive dates of records)

(f)

These boxes contain minutes of the ARMED FORCES POLICY COUNCIL for the period August 1950 to December 1972. These documents are of historical value.

29 Aug 50 AFPC Transcript

23 Aug 50 AFPC Transcript

15 Aug 50 AFPC Transcript

8 Aug 50 AFPC Transcript

1 Aug 50 AFPC Transcript

26 Jul 50 AFPC Meeting (Cancelled)

18 Jul 50 AFPC Meeting

11 Jul 50 AFPC Meeting

3 Jul 50 AFPC Meeting

24 Apr 51 AFPC

Jan 1953 AFPC

AFPC Memoranda

AFPC List of Meetings

AFPC Charter

AFPC - March 1951

AGENCY BOX NUMBERS

(a)

(b)

(c)

(d)

1.

RESTRICTION

(g)

T

DISPOSAL AUTHORITY (With item number)

(h)

OSD 15/5

Para 01-3(a)

DISPOSAL DATE

(i)

Perm

LOCATION

(j)

289.2-3-1SA

COMPLETED BY RECORDS CENTER

FILE NUMBER

(k)

330-77-62

FILE NUMBER

(l)

330-77-62

FILE NUMBER

(m)

330-77-62

FILE NUMBER

(n)

330-77-62

FILE NUMBER

(o)

330-77-62

FILE NUMBER

(p)

330-77-62

FILE NUMBER

(q)

330-77-62

FILE NUMBER

(r)

330-77-62

FILE NUMBER

(s)

330-77-62

FILE NUMBER

(t)

330-77-62

FILE NUMBER

(u)

330-77-62

FILE NUMBER

(v)

330-77-62

FILE NUMBER

(w)

330-77-62

FILE NUMBER

(x)

330-77-62

FILE NUMBER

(y)

330-77-62

FILE NUMBER

(z)

330-77-62

FILE NUMBER

(aa)

330-77-62

FILE NUMBER

(ab)

330-77-62

FILE NUMBER

(ac)

330-77-62

FILE NUMBER

(ad)

330-77-62

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enforcement authority, even partial compliance would be a major improvement on the current situation.

Second, information about all exemptions should be made public immediately. Only the National Reconnaissance Office, the Defense Intelligence Agency, and the Department of State have released their exemption documents. The public has a right to know what records have been exempted from automatic declassification and for how long. Similarly, all Declassification Plans submitted to ISOO should be accessible. Only eighteen have been released. These documents provide a wealth of information about the automatic/systematic declassification review programs of the National Archives, presidential libraries, and agencies that is simply unavailable elsewhere. As it stands now, time-consuming Freedom of Information Act or Mandatory Declassification Review requests have to be filed for the exemptions and Declassification Plans. No justification exists for withholding these items. Those that are classified can be redacted before release, as the National Reconnaissance Office did with its exemption document. At the Public Interest Declassification Board meeting on 13 October 2006, ISOO stated that in 2007 it will place on its website a reference guide to the approved file series exemptions and Interagency Security Classification Appeals Panel-approved declassification guides (but not any Declassification Plans).⁶⁷ Although this is an encouraging development, exactly what these reference guides will include is unclear.

Third, all agencies should redact the records of their high-level officials rather than apply "pass-fail" review. For example, cabinet-level departments and the three military services should be required to redact the records of their secretary, deputy secretary/under secretary, and assistant secretaries. The volume of these individuals' records is small compared to the quantity of records generated by subordinate offices, but they are of great interest to many researchers. Pass-fail review results in too many records being withheld in their entirety, forcing the public to file lengthy Freedom of Information Act or Mandatory Declassification Review requests to see the portions that would have been released under the redaction process.⁶⁸ Only the Central Intelligence Agency currently redacts and does so with all of its records. As noted, the current directive does not mandate redaction. NARA and ISOO should modify it to require that all agencies redact at least their high-level materials.

⁶⁷ The Public Interest Declassification Board was created by Congress in 2000, but did not receive funding until fiscal year 2006. Among its responsibilities is to prepare a report for the president on the automatic/systematic declassification review program. However, the board can only make recommendations and has no authority to implement changes. In 2006 and 2007, it held several public meetings where it heard presentations by agency representatives and members of the public on the program. Information on the board is available at <http://www.archives.gov/declassification/pidb/>, accessed 20 May 2007.

⁶⁸ As an illustration of the shortcomings of the pass-fail process, almost all the documents in the secretary of the air force's classified files from 1955 to 1965 on reconnaissance satellites are withdrawn. These files are in Record Group 340 at the National Archives College Park. Many of the documents undoubtedly could be released at least in part if the redaction standard was employed.

Fourth, the agencies should delegate more declassification authority to NARA, which has an experienced and well-trained declassification staff with all the requisite security clearances. However, few agencies have given it updated authority in the last ten years to declassify their equities.⁶⁹ The result is that on many questions, including the tens of millions of pages of referrals, NARA cannot act itself but must forward them to the appropriate organization. This impedes the entire process. The agencies already have much work to do under the executive orders; they could simplify their job by delegating more declassification authority to the National Archives.⁷⁰ Although NARA needs more staff, it could process many of the referrals faster than the agencies can.

Fifth, agencies should transfer their records to the National Archives as soon as possible after they have been reviewed. What good is it if the 1970 records they have examined languish in a Federal Records Center or agency vault until 2020 or later before being moved to the National Archives? Retention periods longer than thirty years are a key reason why the National Archives has so few records of agencies such as the Federal Bureau of Investigation and no records of agencies such as the National Security Agency. As discussed above, both E.O. 12958 and E.O. 13292 encourage agencies to adopt records management practices to permit public access “at the time such documents are declassified pursuant to the provisions for automatic declassification.” However, these provisions are voluntary, and the transfer dates are in fact governed by NARA-approved records schedules. The Central Intelligence Agency makes its declassified records available to the public at College Park long before the applicable retention periods have run. The other agencies should follow this practice. NARA and ISOO should promulgate a regulation mandating a maximum retention period of thirty years for any permanent, classified materials not covered by a file series exemption approved by the White House.

Sixth, all agencies should provide publicly available estimates of the quantities of permanent, temporary, unappraised, and pending-reappraisal classified records they hold at their own facilities and at off-site locations.⁷¹ In addition to the 220 million pages of unappraised and pending reappraisal classified records at the Federal Records Center in Suitland, do agencies hold an additional 4 billion, 9 billion, or 14 billion pages? Some of the classified unappraised and pending reappraisal records (and possibly temporary records) will eventually be appraised as permanent and thus come under the purview of the

⁶⁹ Author's conversations with National Archives personnel, November 2006.

⁷⁰ This would also speed up the processing of Freedom of Information Act and Mandatory Declassification Review requests submitted to the National Archives and presidential libraries.

⁷¹ This information is already available for holdings at Federal Records Centers. It is not an issue for records at the National Archives or presidential libraries.

executive orders. ISOO needs the data so it can track these materials. The agencies and NARA need it to target their appraisal efforts.

It should not be difficult for the agencies to provide this additional information. They currently furnish ISOO with estimates of the number of permanent, classified records twenty-five years old and older in their Declassification Plans. Furthermore, for each record series stored at an off-site facility (other than a Federal Records Center), agencies must document the creating office, description, volume, classification level, and appraisal status. They must provide this documentation to NARA for all permanent and unappraised records.⁷² Some agencies also prepare periodic reports that set forth certain data for their total off-site holdings. For example, the Central Intelligence Agency's reports for its Agency Records Center list the number of each directorate's records and the cumulative total broken down into indefinite, ongoing, permanent, and temporary categories.⁷³ If the agencies do not produce this data voluntarily, ISOO or NARA should issue a regulation requiring it.

Seventh, the National Archives and presidential libraries should post on their websites what collections have been fully processed and are now publicly accessible (some presidential libraries already indicate this in their online finding aids). The listings for materials at the National Archives should include the record group, entry number, and a brief description. Archivists now have to go to the vaults and examine the records in question to provide this information to researchers. It would be much more convenient and faster to make this data available online.

Need for Increased Public Awareness

A critical factor in continued progress is increased public awareness of and engagement in the automatic/systematic declassification review program. Professional societies and public interest organizations have long been active in advocating openness in government issues. They must now focus their experience and commitment to the automatic/systematic declassification review program.

They can take the following steps. First, as former Society of American Archivists president Timothy L. Ericson wrote several years ago, information professionals must educate themselves by incorporating sessions at professional meetings on the automatic/systematic declassification review program and regularly visiting the websites that contain information on it.⁷⁴ Evaluating the

⁷² 36 Code of Federal Regulations, Section 1228.154.

⁷³ "Organization Summary 1 October 2001–31 March 2002," n.d. During this period, the Agency Records Center held about 11,000 cubic feet (c.f.) of indefinite records, 3,600 c.f. of ongoing records, 59,100 c.f. of permanent records, and 60,800 c.f. of temporary records. The author received this document in October 2002 pursuant to a Mandatory Declassification Review request filed earlier that year.

⁷⁴ Ericson, "Building Our Own 'Iron Curtain': The Emergence of Secrecy in American Government," 51.

state of this important program and recommending improvements depend on knowledge of its history, successes, and limitations.

Second, professional societies and public interest groups must establish mechanisms to communicate with NARA on behalf of the public about its processing priorities, targeting of appraisal efforts, and related actions to improve declassification and public access at the National Archives and the presidential libraries. The public could also use such mechanisms to learn how it can assist NARA and the agencies. Many professional societies and public interest organizations are stakeholders in the success of the automatic/systematic declassification program—Society of American Archivists, American Civil Liberties Union, National Security Archive, OMB Watch, Public Citizen, Reporters Committee for Freedom of the Press, American Historical Association, Society for the History of American Foreign Relations, Society for Military History, and the Federation of American Scientists. They need to contact one another and explore the best means of creating such channels for communication. One possibility is to form a small representative group to meet periodically with NARA. This body could play a vital role in working to improve the program and educating the public about it.

Third, professional societies and public interest organizations must present their concerns to Congress. From all indications, the new 110th Congress will be much more active in reducing secrecy in government. For example, in its February 2007 oversight plan, the Subcommittee on Intelligence Community Management of the House Permanent Select Committee on Intelligence stated that it “will monitor trends in classification of executive branch material, the costs of over-classification, the practice of selective declassification, and the exclusive reliance on a variety of ‘sensitive but unclassified’ designations by U.S. government agencies and departments.”⁷⁵ The Subcommittee on Information Policy, Census, and National Archives of the House Committee on Oversight and Government Reform has already conducted hearings on improving the Freedom of Information Act.⁷⁶ Together, interested groups should contact the relevant congressional committees and request oversight hearings on the automatic/systematic declassification review program and ask that sufficient resources be allocated both to the agencies and NARA to ensure its success.

In summary, E.O. 12958 introduced a radically new declassification procedure that promised to release vast numbers of records to the public. The

⁷⁵ U.S. House of Representatives Permanent Select Committee on Intelligence, Oversight Plan for the 110th Congress, 7 February 2007, 14, available at http://www.fas.org/irp/congress/2007_cr/hpsci2007.pdf, accessed 16 February 2007.

⁷⁶ “House Subcommittee Asks Archive for FOIA Reform Advice,” National Security Archive electronic press release, 14 February 2007, available at <http://www.gwu.edu/~nsarchiv/news/20070214/index.htm>, accessed 16 February 2007.

original 2000 deadline was not met, however, and two subsequent executive orders extended it and created new grounds for further extensions of time for compliance. The White House granted exemptions from automatic declassification for important groups of records at several agencies. Nevertheless, far more progress in declassification has been made in the years E.O. 12958 and its successors have been in effect than in any other comparable period. Still, vast amounts of material remain classified, hidden from public view. Increased public participation is vital to continued progress.