

Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. email	[Personally Identifiable Information] [partial] (1 page)	05/04/1994	b(6)

COLLECTION:

Clinton Presidential Records
Staff Secretary
John Podesta (Subject Files)
OA/Box Number: 17335

FOLDER TITLE:

Executive Order 12356-Classification Order

2018-0662-S

rs3143

RESTRICTION CODES**Presidential Records Act - [44 U.S.C. 2204(a)]**

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

b(1) National security classified information [(b)(1) of the FOIA]
b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

*File
classification
order*

COMPARISON CHART

OF

MARCH 8, 1994 DRAFT EXECUTIVE ORDER

WITH

EXECUTIVE ORDER 12356 (CURRENT ORDER -- REAGAN ORDER),

EXECUTIVE ORDER 12065 (CARTER ORDER)

AND

EXECUTIVE ORDER 11652 (NIXON ORDER)

TABLE OF CONTENTS

<i>ISSUE</i>	<i>PAGE</i>
DURATION OF ORIGINAL CLASSIFICATION	1
DECLASSIFICATION OF OLDER INFORMATION	2
BALANCING TEST	3
OVERSIGHT	4
SPECIAL ACCESS PROGRAMS	5
TONE	6
FOREIGN GOVERNMENT INFORMATION	7
CLASSIFICATION STANDARDS	8
CLASSIFICATION LEVELS	9
DESIGNATION OF ORIGINAL CLASSIFIERS	10
CLASSIFICATION CATEGORIES	11
PORTION MARKING	12
RECLASSIFICATION PROHIBITIONS	13
CHALLENGES TO CLASSIFICATION	14
CLASSIFICATION GUIDES	15
DECLASSIFICATION DATABASE	16
ACCOUNTING AND REPORTING OF SECURITY COSTS	17
SANCTIONS	18

ISSUE: DURATION OF CLASSIFICATION

March 8, 1994 Draft	E.O. 12356 (Current Order--Reagan Order)
- Requires classifiers to establish a date or event for declassification when possible. - Establishes a maximum duration of classification for most information: <u>Top Secret</u> and <u>Secret</u> 10 years <u>Confidential</u> 6 years - Exempts 6 narrow categories of information from the 6 and 10 year rule. - Does not apply the 6 and 10 year rule to information created under prior orders.	- Requires classifiers to establish a date or event for declassification when possible. - Establishes indefinite duration of classification when a date or event cannot be determined.
E.O. 12065 (Carter Order)	E.O. 11652 (Nixon Order)
- Establishes a 6 year rule for classification of most information. - Allows Top Secret classification authorities to exempt any information from the 6 year rule.	- Establishes a general declassification schedule for duration based on classification level: <u>Top Secret</u> 10 years <u>Secret</u> 8 years <u>Confidential</u> 6 years - Allows classification authorities broad discretion to exempt information from general declassification schedule.

ISSUE: DECLASSIFICATION OF OLDER INFORMATION

March 8, 1994 Draft	E.O. 12356 (Current Order--Reagan Order)
• Requires automatic declassification (without review) of most 25 year old information. • Establishes 6 very narrow categories of information exempted from automatic declassification at 25 years. • Requires agencies to systematically review for declassification historically valuable records exempted from automatic declassification. • Requires mandatory review for declassification of information, no matter what its age, when it is the subject of an access demand. • Provides an interagency appeal mechanism for denials of mandatory declassification review requests.	• Does not automatically declassify older information. • Requires the National Archives to systematically review for declassification historically valuable records when 30 years old. • Encourages other agencies to conduct systematic review programs. • Requires mandatory review for declassification of information, no matter what its age, when it is the subject of an access demand.
E.O. 12065 (Carter Order)	E.O. 11652 (Nixon Order)
• Requires agencies to systematically review for declassification historically valuable records that are 20 years old. • Requires mandatory review for declassification of information, no matter what its age, when it is the subject of an access demand.	• Requires agencies to systematically review for declassification historically valuable records that are 30 years old. • Requires mandatory review for declassification of information, no matter what its age, when it is the subject of an access demand. • Requires automatic declassification of 30 year old information classified under this Order with broad discretion by agency heads to continue classification.

ISSUE: BALANCING TEST

March 8, 1994 Draft	E.O. 12356 (Current Order--Reagan Order)
• Prohibits the classification of information when the public interest in disclosure outweighs the public interest in protection. • Requires the declassification of information when the public interest in disclosure outweighs the public interest in continued protection.	• Does not address balancing of interests.
E.O. 12065 (Carter Order)	E.O. 11652 (Nixon Order)
• Requires the declassification of information when the public interest in disclosure outweighs the public interest in continued protection.	• Does not address balancing of interests.

ISSUE: OVERSIGHT	
March 8, 1994 Draft	E.O. 12356 (Current Order--Reagan Order)
• Maintains oversight duties assigned to the National Security Council (NSC), the Information Security Oversight Office (ISOO), and the senior agency officials. • Establishes a Council of non-Government representatives to recommend subject areas for declassification review and to advise on the Order's policies. • Establishes an Interagency Security Classification Appeals Panel as the appellate authority for classification challenges and mandatory review appeals. • Calls for agency Inspectors General to conduct periodic evaluations of the program.	• Maintains the National Security Council (NSC), as the provider of overall policy direction for the program. • Maintains the Information Security Oversight Office to oversee the program on behalf of the NSC. • Maintains the oversight duties assigned to the senior agency official.
E.O. 12065 (Carter Order)	E.O. 11652 (Nixon Order)
• Designates the National Security Council (NSC) as the provider of overall policy direction for the program. • Establishes the Information Security Oversight Office (ISOO) to oversee the program on behalf of the NSC. • Requires a senior agency official to conduct oversight duties. • Establishes an Interagency Security Committee, chaired by ISOO, to advise on implementation of the Order.	• Establishes an Interagency Classification Review Committee to assist the National Security Council in monitoring implementation of the Order. • Requires agency heads to designate senior agency officials to oversee the implementation of the program.

ISSUE: SPECIAL ACCESS PROGRAMS (SAPs)**March 8, 1994 Draft**

- Limits the number of agencies authorized to establish SAPs.
- Requires annual revalidation by agency head or deputy agency head.
- Requires presidential approval for SAPs to be continued beyond 5 years.
- Increases significantly internal and external oversight of SAPs.

E.O. 12356 (Current Order--Reagan Order)

- Gives agencies broad authority to create and maintain SAPs.
- Provides minimal external monitorship of SAPs.

E.O. 12065 (Carter Order)

- Specifies intra-agency mechanisms to limit proliferation of SAPs.
- Provides minimal external monitorship of SAPs.

E.O. 11652 (Nixon Order)

- Makes no explicit reference to SAPs.

ISSUE: TONE

March 8, 1994 Draft

- Makes a commitment to open Government in the preamble and provides enforcement mechanisms throughout.

E.O. 12356 (Current Order--Reagan Order)

- Emphasizes in the preamble and throughout the need to protect classified information.

E.O. 12065 (Carter Order)

- Makes a commitment to open Government in the preamble and in some of the sections, but does not provide enforcement mechanisms.

E.O. 11652 (Nixon Order)

- Makes a commitment to open Government in the preamble and in some of the sections, but does not provide enforcement mechanisms.

ISSUE: FOREIGN GOVERNMENT INFORMATION (FGI)

March 8, 1994 Draft	E.O. 12356 (Current Order--Reagan Order)
• Defines FGI as information received in confidence from a foreign government. • Eliminates presumption that FGI is always classified. • Requires renegotiation of treaties that extend classification of FGI beyond 25 years.	• Defines FGI as information expressly or impliedly received in confidence from a foreign government. • Establishes presumption that FGI is always classified.
E.O. 12065 (Carter Order)	E.O. 11652 (Nixon Order)
• Defines FGI as information received in confidence from a foreign government. • Establishes presumption that FGI is always classified.	• Defines FGI as information received by the United States from a foreign government with the understanding that it be kept in confidence.

ISSUE: CLASSIFICATION STANDARDS	
March 8, 1994 Draft	E.O. 12356 (Current Order--Reagan Order)
• Requires classifiers to identify or describe the damage to the national security. • Specifies that no category of information warrants presumptive classification. • Provides that instances of doubt be resolved in favor of non-classification.	• Does not require classifiers to identify or describe the damage to the national security. • Provides several categories of information requiring presumptive classification. • Requires that instances of doubt be referred to higher authority for review.
E.O. 12065 (Carter Order)	E.O. 11652 (Nixon Order)
• Introduces "identifiable damage" as the threshold for classification. • Provides that instances of doubt be resolved in favor of non-classification. • Provides several categories of information requiring presumptive classification.	• No comparable provisions.

ISSUE: CLASSIFICATION LEVELS

March 8, 1994 Draft	E.O. 12356 (Current Order--Reagan Order)
Establishes 3 classification levels: <u>Top Secret</u> - disclosure could reasonably be expected to cause exceptionally grave damage to the national security that the classifier is able to identify or describe. <u>Secret</u> - . . . serious damage to the national security that the classifier is able to identify or describe. <u>Confidential</u> - . . . damage to the national security that the classifier is able to identify or describe.	Establishes 3 classification levels: <u>Top Secret</u> - unauthorized disclosure could reasonably be expected to cause exceptionally grave damage to the national security. <u>Secret</u> - . . . serious damage to the national security. <u>Confidential</u> - . . . damage to the national security.
E.O. 12065 (Carter Order)	E.O. 11652 (Nixon Order)
Establishes 3 classification levels: <u>Top Secret</u> - unauthorized disclosure could reasonably be expected to cause exceptionally grave damage to the national security. <u>Secret</u> - . . . serious damage to the national security. <u>Confidential</u> - . . . <i>identifiable</i> damage to the national security.	Establishes 3 classification levels: <u>Top Secret</u> - unauthorized disclosure could reasonably be expected to cause exceptionally grave damage to the national security. <u>Secret</u> - . . . serious damage to the national security. <u>Confidential</u> - . . . damage to the national security.

ISSUE: DESIGNATION OF ORIGINAL CLASSIFIERS

March 8, 1994 Draft	E.O. 12356 (Current Order--Reagan Order)
• Limits the authority to delegate original classification authority. • Training is required before an original classifier can exercise his authority. • Management of classified information by an original classifier to be an element of annual performance evaluation.	• Limits the authority to delegate original classification authority. • No training is required before an original classifier can exercise his authority. • No performance accountability for management of classified information by original classifiers.
E.O. 12065 (Carter Order)	E.O. 11652 (Nixon Order)
• Limits the authority to delegate original classification authority. • No training is required before an original classifier can exercise his authority. • No performance accountability for management of classified information by original classifiers.	• Limits the authority to delegate original classification authority. • No training is required before an original classifier can exercise his authority. • No performance accountability for management of classified information by original classifiers.

ISSUE: CLASSIFICATION CATEGORIES	
March 8, 1994 Draft	E.O. 12356 (Current Order--Reagan Order)
- Provides 6 categories of information that may be classified, each broad in scope. - Eliminates the catch-all category.	- Provides 10 categories of information that may be classified, each broad in scope. - Includes a catch-all category for national security information requiring protection.
E.O. 12065 (Carter Order)	E.O. 11652 (Nixon Order)
- Provides 7 categories of information that may be classified, each broad in scope. - Includes a catch-all category for national security information requiring protection .	Establishes no specific categories of information that may be classified.

ISSUE: PORTION MARKING**March 8, 1994 Draft**

- Requires portion marking of each classified document.
- Eliminates portion marking waivers.

E.O. 12356 (Current Order--Reagan Order)

- Requires portion marking of each classified document.
- Allows portion marking waivers by agency head without Information Security Oversight Office approval.

E.O. 12065 (Carter Order)

- Requires portion marking of each classified document.
- Allows portion marking waivers by agency head with the approval of the Information Security Oversight Office.

E.O. 11652 (Nixon Order)

- Suggests that classifiers portion mark documents when practicable.

ISSUE: RECLASSIFICATION PROHIBITIONS

March 8, 1994 Draft	E.O. 12356 (Current Order--Reagan Order)
Prohibits the reclassification of information after it has been declassified and released to the public under proper authority.	Allows the reclassification of information previously declassified and disclosed under certain limited conditions.
E.O. 12065 (Carter Order)	E.O. 11652 (Nixon Order)
Prohibits the reclassification of information after it has been declassified and released to the public under proper authority.	Does not address nor necessarily prohibit reclassification actions.

ISSUE: CHALLENGES TO CLASSIFICATION

March 8, 1994 Draft	E.O. 12356 (Current Order--Reagan Order)
• Encourages and expects authorized holders to challenge classification decisions that they believe to be improper. • Directs agencies to establish procedures for processing challenges to classification. • Ensures that challengers are not subject to retribution.	• Does not address challenges to classification.
E.O. 12065 (Carter Order)	E.O. 11652 (Nixon Order)
• Encourages agency personnel to challenge classification decisions that they believe to be improper. • Provides no mechanism for processing challenges or ensuring non-retribution.	• Requires holders of classified information to inform originator of improper classification. • Requires the originator to re-examine the classification.

ISSUE: CLASSIFICATION GUIDES**March 8, 1994 Draft**

- Requires agencies to prepare classification guides to facilitate derivative classification.
- Requires uniform standards for classification guides.
- Eliminates waivers from the requirement to produce classification guides.

E.O. 12356 (Current Order--Reagan Order)

- Requires agencies to prepare classification guides to facilitate derivative classification.
- No standards required for classification guides.
- Allows agency heads to waive the requirement to produce classification guides.

E.O. 12065 (Carter Order)

- Requires, for the first time, classification guides to specifically identify the information to be classified.

E.O. 11652 (Nixon Order)

- Does not address the issue of classification guides.

ISSUE: DECLASSIFICATION DATABASE	
March 8, 1994 Draft	E.O. 12356 (Current Order--Reagan Order)
- Establishes a Government-wide declassification database. - Provides public access to declassified information contained in database.	Does not require a declassification database.
E.O. 12065 (Carter Order)	E.O. 11652 (Nixon Order)
Does not require a declassification database.	Does not require a declassification database.

ISSUE: ACCOUNTING AND REPORTING OF SECURITY COSTS**March 8, 1994 Draft**

- Requires agencies to account for and report annually costs associated with the security classification program.

E.O. 12356 (Current Order--Reagan Order)

- Does not require accounting for costs.

E.O. 12065 (Carter Order)

- Does not require accounting for costs.

E.O. 11652 (Nixon Order)

- Does not require accounting for costs.

ISSUE: SANCTIONS**March 8, 1994 Draft**

- Broadens sanctions to include: (1) the improper administration of special access programs; and (2) reckless disregard or pattern of error in applying the classification standards.
- Specifies knowing, willful or negligent violations as deserving of sanctions.

E.O. 12356 (Current Order--Reagan Order)

- Does not address sanctions for improper administration of special access programs or a reckless disregard or pattern of error in applying classification standards.
- Specifies knowing, willful or negligent violations as deserving of sanctions.

E.O. 12065 (Carter Order)

- Does not address sanctions for improper administration of special access programs or a reckless disregard or pattern of error in applying classification standards.
- Specifies knowing, willful or negligent violations as deserving of sanctions.

E.O. 11652 (Nixon Order)

- Does not address sanctions for improper administration of special access programs or a reckless disregard or pattern of error in applying classification standards.
- Establishes a general framework for administrative actions as a result of violating the Order.

THE WHITE HOUSE
WASHINGTON

*faked
6/1*

OFFICE OF THE STAFF SECRETARY

Fax Transmittal Sheet

JAMES CICCONI	887-4288
TED OLSON	467-0539
STEVE BLITZ	310-277-5827
RICHARD NORTON SMITH	805-520-9702
JOHN MINTZ	467-0539

TO:

Fax Number:

Phone Number:

FROM: JOHN PODESTA/MARVIN KRISLOV

SUBJECT: PROPOSED REVISIONS TO PROCESSING MANUAL

DATE: 6-1-94

NUMBER OF PAGES (including cover sheet): 7

MESSAGE:

Per our discussion on Tuesday, May 17, 1994 (conference call). Call John Podesta (456-2702) or Marvin Krislov (456-7903) if you have any questions or comments.

If all pages are not received, please call 202/456-2702

The document accompanying this facsimile transmittal sheet is intended only for the use of the individual or entity to whom it is addressed. This message contains information which may be privileged, confidential or exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any disclosure, dissemination, copying or distribution, or the taking of any action in reliance on the contents of this communication is strictly prohibited.

[The following section on PRA restriction (a)(1) would be inserted into the Processing Manual starting at current page 25:]

ACCESS SHALL BE RESTRICTED WITH RESPECT TO INFORMATION IN A PRESIDENTIAL RECORD, WITHIN ONE OR MORE OF THE FOLLOWING CATEGORIES:

I. ~~Exemption Restriction~~ (a)(1) of the PRA and ~~(b)(1) of the FOIA~~ [category A1 on the withdrawal sheet]: "(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) in fact properly classified pursuant to such Executive order."

-- The requirements under Exemptions (a)(1) of the PRA and (b)(1) of the FOIA are the same.

-- Reviewers must familiarize themselves with the requirements of Executive Order 12356 (Appendix E).

-- Reviewers should presume that information bearing classification markings is appropriately classified. If it does not appear to be properly classified, the reviewer should bring it to the attention of an appropriate supervisor.

1. Security classified material should be conspicuously stamped "Top Secret", "Secret", or "Confidential". These markings usually appear at the top and bottom of each page and may be accompanied by additional markings.

2. Classified documents may contain various markings unaccompanied by a normal security classification marking which may not be immediately intelligible. ~~Such markings may appear at the top and/or bottom of the page or they may appear in the text of a document, often in capital letters. These markings or codewords often identify highly classified~~

~~intelligence gathering systems or operations and are especially sensitive.~~ If reviewers encounter documents with these markings ~~that they are not familiar with,~~ they should immediately ~~be referred~~ ~~them~~ to the Supervisory Archivist or a staff member with ~~the appropriate clearances to handle such documents~~ specific expertise in national security information.

3. Material marked "Atomic", "Cosmic", and "NATO Restricted" are the NATO equivalents of U.S. classified markings and should be so treated. These documents should also be referred to an appropriate supervisor.

4. Although security classified markings are intended to be highly visible, they often are not. This is particularly true with respect to cable messages and photocopied documents. Care must be taken in review of documents that may contain security information in order to identify such classified materials.

5. Security classification markings should not be confused with administrative markings. Generally, documents containing no classification markings and stamped with markings of "Administratively Confidential", "Personal and Confidential", "Official Use Only", "Limited Distribution", or "Limited Official Use," ~~while generally~~ ~~although they may be~~ sensitive documents, are not national security documents and materials thus labeled should be treated as unclassified, although the materials may fall within another of the restricted categories.

-- Sometimes documents that contain classified information are not properly marked. If reviewers see information they suspect should be marked as classified, it should be referred

to the appropriate supervisor. Reviewers should be particularly careful with Head of State correspondence.

-- Information that should be ~~considered for classification~~ treated as classified includes:

1. military plans, weapons, or operations;
2. the vulnerabilities or capabilities of systems, installations, projects, or plans relating to the national security;
3. foreign government information;
4. intelligence activities (including special activities), or intelligence sources or methods;
5. foreign relations or foreign activities of the United States;
6. scientific, technological, or economic matters relating to the national security;
7. United States Government programs for safeguarding nuclear materials or facilities;
8. cryptology;
9. a confidential source; or
10. other categories of information that are related to the national security and that require protection against unauthorized disclosure as determined by the President or by agency heads or other officials who have been delegated original classification authority by the President.

Note that the above categories are those used in current E.O. 12356 and that any new executive order may contain new categories.

-- The following procedures apply to the systematic review of documents containing classified information:

1. Documents containing classified information will be withdrawn.

2. Upon request by a researcher for a mandatory review for declassification of records containing information that was classified by agencies, rather than by the President or his advisors (E.O. 12356, Sec. 3.4(a)), we will send the specified documents to the originating agency for review.

3. Even though classified information originated by a President or his staff or advisors is exempted from the foregoing provision, the Executive Order still provides that the Archivist (who does not have classification authority) has the authority to "review, downgrade and declassify" such Presidentially classified information and will establish procedures for consulting with the agencies having primary subject matter interest in such information. E.O. 12356, Sec. 3.4(b). NARA has issued regulations implementing those provisions of the Executive Order (36 C.F.R. §§ 1254.42, 1254.46), and thus we will conduct consultations with agencies having primary subject matter interest when researchers request that documents in this category be considered for declassification.

-- The following procedures apply to responding to FOIA requests for documents containing classified information:

1. Documents that are determined to be responsive to a FOIA request and that contain classified information will be referred to the originating agency or the agency with primary subject matter interest for classification review. The requester will be advised that the document(s) have been referred for review, but that in the meantime access to the classified information will be denied under PRA restriction 1. 44 U.S.C. § 2204(a)(1).

Note that under the PRA, the Archivist still must exercise her discretion in determining access to information after seeking the advice of the agencies with primary subject matter interest and expertise with regard to that information. It is the Archivist who has the final decision regarding the application of the restrictions.

2. There is an exception to the referral procedure when the record containing the classified information would be withheld completely under one or more other PRA restrictions. In that case, the requester will be informed that the information will not be referred for classification review until such time as the other restriction(s) are lifted.

At the same time, if a classified document contains unclassified portions that are not otherwise restricted under the PRA, those portions should be released to the requester during the initial response.

-- Documents that are determined through either systematic review or FOIA review to be potentially classifiable, but that are not currently marked as classified, should always be referred to the appropriate classification authority for review and proper classification.

[The following revision to the section on general procedures under the PRA would be inserted into the Processing Manual starting at current page 20:]

sanitization during a re-review of the document after initial opening.

Upon receipt of a FOIA request (i.e., after January 20, 1994), reviewers should ~~conduct a line-by-line review and segregation of~~ attempt to segregate any non-restricted and non-exempt information within a document so that any reasonably segregable portions may be disclosed. The reviewer should sanitize any restricted/exempted portions and designate the applicable restriction/exemption.

6. Where a number of documents are fastened together to constitute a "case file" (also called a "letter case"), reviewers are to remove restricted documents or pages so that the rest of the case may be opened, including inconsequential documents or pages.

7. Reviewers are to tab all restricted material for withdrawal by placing a double tab around the restricted pages. The restricted category under which the item is closed should be indicated by writing on the tab the appropriate letter matching one of the categories listed at the bottom of the withdrawal sheet ~~(A, B1-B10,~~ e).

8. Library staff are to prepare withdrawal sheets for all closed material, under the specifications found in the section entitled "Review Withdrawal Sheets".

9. In addition to review, processing archivists are also responsible for:

(a) ensuring that all documents have been placed in their appropriate folders and that all folders have been placed in their

Fran - Here are two sets of proposed ^{revisions to the} Processing Manual. One is for ^{Presidential} John's files. The other should be

faxed around to the conference call,
folks -- Ted Olson, Steve Blitz, Richard
Norton Smith, Jim Cicchini, John Mintz.

Please write me following: —
Per our discussion on Tuesday. Please
call John Podesta or Marvin Kristlov (6-1903)
if you have any comments or
questions.

JP: This is from Marvin.
OK to fax to those
he has listed?

94 MAY 19 P6:57

— yes if
not done
already
JDP

[The following section on PRA restriction (a)(1) would be inserted into the Processing Manual starting at current page 25:]

ACCESS SHALL BE RESTRICTED WITH RESPECT TO INFORMATION IN A PRESIDENTIAL RECORD, WITHIN ONE OR MORE OF THE FOLLOWING CATEGORIES:

I. ~~Exemption Restriction~~ (a)(1) of the PRA and ~~(b)(1) of the FOIA~~ [category A1 on the withdrawal sheet]: "(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) in fact properly classified pursuant to such Executive order."

-- The requirements under Exemptions (a)(1) of the PRA and (b)(1) of the FOIA are the same.

-- Reviewers must familiarize themselves with the requirements of Executive Order 12356 (Appendix E).

-- Reviewers should presume that information bearing classification markings is appropriately classified. If it does not appear to be properly classified, the reviewer should bring it to the attention of an appropriate supervisor.

1. Security classified material should be conspicuously stamped "Top Secret", "Secret", or "Confidential". These markings usually appear at the top and bottom of each page and may be accompanied by additional markings.

2. Classified documents may contain various markings unaccompanied by a normal security classification marking which may not be immediately intelligible. ~~Such markings may appear at the top and/or bottom of the page or they may appear in the text of a document, often in capital letters. These markings or codewords often identify highly classified~~

~~intelligence gathering systems or operations and are especially sensitive.~~ If reviewers encounter documents with these markings ~~that they are not familiar with,~~ they should immediately ~~be referred~~ ~~them~~ to the Supervisory Archivist or a staff member with ~~the appropriate clearances to handle such documents~~ ~~specific expertise in national security information.~~

3. Material marked "Atomal", "Cosmic", and "NATO Restricted" are the NATO equivalents of U.S. classified markings and should be so treated. These documents should also be referred to an appropriate supervisor.

4. Although security classified markings are intended to be highly visible, they often are not. This is particularly true with respect to cable messages and photocopied documents. Care must be taken in review of documents that may contain security information in order to identify such classified materials.

5. Security classification markings should not be confused with administrative markings. Generally, documents containing no classification markings and stamped with markings of "Administratively Confidential", "Personal and Confidential", "Official Use Only", "Limited Distribution", or "Limited Official Use," ~~while generally~~ ~~although they may be~~ sensitive documents, are not national security documents and materials thus labeled should be treated as unclassified, although the materials may fall within another of the restricted categories.

-- Sometimes documents that contain classified information are not properly marked. If reviewers see information they suspect should be marked as classified, it should be referred

to the appropriate supervisor. Reviewers should be particularly careful with Head of State correspondence.

-- Information that should be ~~considered for classification~~ treated as classified includes:

1. military plans, weapons, or operations;
2. the vulnerabilities or capabilities of systems, installations, projects, or plans relating to the national security;
3. foreign government information;
4. intelligence activities (including special activities), or intelligence sources or methods;
5. foreign relations or foreign activities of the United States;
6. scientific, technological, or economic matters relating to the national security;
7. United States Government programs for safeguarding nuclear materials or facilities;
8. cryptology;
9. a confidential source; or
10. other categories of information that are related to the national security and that require protection against unauthorized disclosure as determined by the President or by agency heads or other officials who have been delegated original classification authority by the President.

Note that the above categories are those used in current E.O. 12356 and that any new executive order may contain new categories.

-- The following procedures apply to the systematic review of documents containing classified information:

1. Documents containing classified information will be withdrawn.

2. Upon request by a researcher for a mandatory review for declassification of records containing information that was classified by agencies, rather than by the President or his advisors (E.O. 12356, Sec. 3.4(a)), we will send the specified documents to the originating agency for review.

3. Even though classified information originated by a President or his staff or advisors is exempted from the foregoing provision, the Executive Order still provides that the Archivist (who does not have classification authority) has the authority to "review, downgrade and declassify" such Presidentially classified information and will establish procedures for consulting with the agencies having primary subject matter interest in such information. E.O. 12356, Sec. 3.4(b). NARA has issued regulations implementing those provisions of the Executive Order (36 C.F.R. §§ 1254.42, 1254.46), and thus we will conduct consultations with agencies having primary subject matter interest when researchers request that documents in this category be considered for declassification.

-- The following procedures apply to responding to FOIA requests for documents containing classified information:

1. Documents that are determined to be responsive to a FOIA request and that contain classified information will be referred to the originating agency or the agency with primary subject matter interest for classification review. The requester will be advised that the document(s) have been referred for review, but that in the meantime access to the classified information will be denied under PRA restriction 1. 44 U.S.C. § 2204(a)(1).

Note that under the PRA, the Archivist still must exercise her discretion in determining access to information after seeking the advice of the agencies with primary subject matter interest and expertise with regard to that information. It is the Archivist who has the final decision regarding the application of the restrictions.

2. There is an exception to the referral procedure when the record containing the classified information would be withheld completely under one or more other PRA restrictions. In that case, the requester will be informed that the information will not be referred for classification review until such time as the other restriction(s) are lifted.

At the same time, if a classified document contains unclassified portions that are not otherwise restricted under the PRA, those portions should be released to the requester during the initial response.

-- Documents that are determined through either systematic review or FOIA review to be potentially classifiable, but that are not currently marked as classified, should always be referred to the appropriate classification authority for review and proper classification.

[The following revision to the section on general procedures under the PRA would be inserted into the Processing Manual starting at current page 20:]

sanitization during a re-review of the document after initial opening.

Upon receipt of a FOIA request (i.e., after January 20, 1994), reviewers should ~~conduct a line-by-line review and segregation of~~ attempt to segregate any non-restricted and non-exempt information within a document so that any reasonably segregable portions may be disclosed. The reviewer should sanitize any restricted/exempted portions and designate the applicable restriction/exemption.

6. Where a number of documents are fastened together to constitute a "case file" (also called a "letter case"), reviewers are to remove restricted documents or pages so that the rest of the case may be opened, including inconsequential documents or pages.

7. Reviewers are to tab all restricted material for withdrawal by placing a double tab around the restricted pages. The restricted category under which the item is closed should be indicated by writing on the tab the appropriate letter matching one of the categories listed at the bottom of the withdrawal sheet ~~(A, B1-B10, E)~~.

8. Library staff are to prepare withdrawal sheets for all closed material, under the specifications found in the section entitled "Review Withdrawal Sheets".

9. In addition to review, processing archivists are also responsible for:

(a) ensuring that all documents have been placed in their appropriate folders and that all folders have been placed in their

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. email	[Personally Identifiable Information] [partial] (1 page)	05/04/1994	b(6)

COLLECTION:

Clinton Presidential Records
Staff Secretary
John Podesta (Subject Files)
OA/Box Number: 17335

FOLDER TITLE:

Executive Order 12356-Classification Order

2018-0662-S

rs3143

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

Jennifer
5430
ST

EXECUTIVE OFFICE OF THE PRESIDENT

04-May-1994 09:07am

TO: Jody A. Greenstone
FROM: Marvin Krislov
Office of the Counsel
CC: John Podesta
SUBJECT: meeting

7903 Sylvia
✓ Jodie Greenstone
✓ Chris Schroeder
Cleared 514-3714

(b)(6)

cd you pls set up a meeting with folks regarding the pra and processing. the times available for chris schroeder and myself are tomorrow (th) aft this week, and afts--tu, wed (not great for schroeder) and th next week. we shd. probably build in half-hour/forty five minutes before hand and then approx an hour for phone call, etc.

invitees: ✓ James cicconi, akin gump 202 887-4004
✓ Richard norton smith 805 522-2977
Noted olson, gibson, dunn dc 955-8668
NO Steve blitz, la 310-552-8543.
plus john and yourself

thanks. let me know.

Not on call
Friday 13
Thurs. May 12
2:00
2:30
3:00 call

J.P: Jody doesn't feel she needs to attend (per her office)

✓ schedule for next week
no has #

GARFINKEL: I'm quoting from an article written by Messrs. Aftergood and Blanton that appeared in the *New York Times* of September 30, 1993, subsequent to their reviewing a copy of the preliminary draft, and it's from an article entitled, "Secrets and More Secrets," and I don't know which of the two of them was the author of this particular section that I'm going to read. I'll assume they did it jointly.

[T]he first draft of that review, which leaked out in Washington this week, does not even meet the formal standards of openness set by President Richard M. Nixon at the height of the cold war. The draft proposal -- the work of a task force of career secrecy bureaucrats -- is full of rhetorical lip service to the idea of openness. For example, it claims credit for setting a "maximum life span" for classified information -- what the archival world calls a drop-dead date. But the proposed implementing language sets that date at 40 years, with exceptions for even longer withholding. By contrast, in his 1972 executive order President Nixon set a drop-dead date at 30 years, and in 1978 President Jimmy Carter chose 20 years.

End quote. What I would like to ask Messrs. Aftergood and Blanton, and I will not quote from the Nixon Executive Order 11652 or from the Carter Executive Order 12065, but I'm prepared to provide those quotes if you would like them, but from my reading of those executive orders and from practice and reading of everyone else, there was no drop-dead date in either of those executive orders. The Nixon order introduced the concept of systematic review at 30 years, and the Carter order took the 30 year rule of systematic review and made it a 20 year rule. My question to you then, in preparing this article, did you act deliberately to distort the record or did you simply not read the material [last several words drowned out by audience laughter]?

AFTERGOOD: You are correct in large part. I concede with my share of the responsibility that it is incorrect to state as we did that Nixon or Carter enacted or articulated a drop-dead date. That is an error in the article that was the result of haste and space. Anyway, it was a mistake and we were wrong to have put it that way. I would paint a slightly different picture than you just have. Nixon and Carter made reference to not simply to systematic review but to a maximum classification lifetime. They anticipated very narrowly identified categories that would be separated out in the course of systematic review. Their systematic review process was a winnowing out of these narrowly defined categories. Of course, the categories were never narrowly defined and the process did not work, the orders were defective and we did not mean to suggest that they should be adopted today. The only point that we were trying to make was that even to someone like President Nixon, who is renowned for his lack of commitment to open government, it was conceivable to enunciate a maximum classification lifetime, as he put it, of 30 years even though his order did not live up to that standard.

GARFINKEL: Would you be prepared to advise the *New York Times* of your misspoken comment?

BLANTON: We already did so to the extent that we originally started with language that said both Nixon and Carter, there were two language changes made in the editing process, one was, it was, we originally had goals set out by Carter and Nixon, and I think that is what makes the piece still accurate and I would submit that it is still accurate as a critique of the current draft, which is to say we don't think that this draft lives up, exceeds, the goals that they were setting and which we admit that they did not achieve. Saying that

they set a standard, however, gets you into the arena of how did they apply it, whether it got implemented, you name it. So I would, those words got changed in the editing process. On the issue of what we originally had in there was a maximum classification lifespan and they used the phrase drop-dead date to make it, that's something that *New York Times'* readers apparently don't understand is a phrase. Which is something that you should be used to, in trying to explain the security system to a general public. And so we move to that, I think what I would want to stick to is what I said in my talk earlier, which was by means of an explanation of exactly this point. We don't believe that those were drop-deads but neither is the 40 year rule you've got in your draft a drop-dead. There is no such thing as a drop-dead, and we're never going to have a drop-dead. And so let's argue about what's the most efficient way to get this bulk of old secrets released and how to hold down the bulk of new secrets.

NATIONAL SECURITY COUNCIL

WASHINGTON, D.C. 20506

November 19, 1993

NOV 19 P5:02

MEMORANDUM FOR:

JOHN PODESTA
JEFF SMITH
PAUL RICHARD

FROM:

GEORGE J. TENET

SUBJECT:

Meeting of EO 12356



Attached for your review prior to **Tuesday's 1:00 PM meeting** is a list of major issues and options that I would like to discuss relative to **Executive Order 12356, "National Security Information."** Also attached is a copy of the November 10 draft EO, since all options include a reference to this latest draft order.

Attachments: a/s

DURATION OF ORIGINAL CLASSIFICATION DECISIONS

ALTERNATIVE OPTION:

--THERE SHOULD BE A REBUTTABLE PRESUMPTION THAT ALL CLASSIFIED INFORMATION WILL BE DECLASSIFIED NO LATER THAN 10 YEARS FROM THE DATE OF CREATION.

--AGENCY HEADS SHOULD BE GIVEN SIX MONTHS TO IDENTIFY CATEGORIES OF INFORMATION THAT ARE UNLIKELY TO BE DECLASSIFIED IN TEN YEARS AND ALLOWED TO CLASSIFY SUCH INFORMATION FOR 15 OR 20 YEARS. CATEGORIES REVIEWED AND APPROVED BY SENIOR GOVERNMENT-WIDE DECISION BODY.

--A DOCUMENT COULD BE EXEMPTED FROM AUTOMATIC DECLASSIFICATION AT THE END OF 10, 15, OR 20 YEARS ONLY BY THE HEAD OF THE AGENCY, DEPUTY, OR SENIOR OFFICIAL ON A CASE-BY-CASE BASIS, UNLESS IT FELL WITHIN ONE OF THE CATEGORIES OF INFORMATION, ELIGIBLE IN THE DRAFT ORDER, FOR CONTINUED CLASSIFICATION BEYOND 20 YEARS.

PROS:

- PROMOTES EARLIER DECLASSIFICATION OF INFORMATION NOT EXCEPTED.
- ALLOWS EXCEPTED INFORMATION TO BE PROTECTED FOR THE APPROPRIATE TIME FRAME
- PROMOTES GREATER WILLINGNESS TO RELEASE INFORMATION WITHOUT REVIEW OR WITH A VERY LIMITED REVIEW.
- LOW COST TO GOVERNMENT, HIGH BENEFIT TO THE PUBLIC, AND FEW RESOURCES DIVERTED FROM REAL FOIA, PRIVACY ACT AND MANDATORY DECLASSIFICATION REQUESTS.

CONS

- WILL BE CRITICISM THAT TOO MUCH WILL BE EXEMPTED FOR TOO LONG.
- STILL REQUIRES SOME REVIEW OF DOCUMENTS

(5) reveal foreign government information received by the United States with the clear expectation that the information would be protected for a period greater than ten years; or

(6) violate a statute, treaty, or international agreement.

(d) Information marked for an indefinite duration of classification under predecessor orders, for example, "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.

* * * * *

Section 3.4 *Automatic Declassification.*

(a) Information classified under this or any predecessor order shall be automatically declassified 25 years from the date of its creation. Within three years from the date of the issuance of this Order, all classified information more than 25 years old shall be automatically declassified, subject to paragraph (b), below.

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

Section 1.6 *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. The date or event shall not exceed the time frames in paragraph (b), below.

(b) If the original classification authority cannot determine an earlier specific date or event for declassification, information originally classified under this Order shall be marked for automatic declassification ten years from the date of the original decision, except as provided in paragraph (c), below.

(c) At the time of original classification, the original classification authority may exempt from automatic declassification under paragraph (b), above, specific information, the release of which, even after the passage of ten years, could reasonably be expected to:

- (1) reveal an intelligence source, or an intelligence method that remains active;
- (2) reveal information that would clearly assist in the development or use of weapons of mass destruction;
- (3) reveal information that would clearly impair United States cryptologic systems or activities;
- (4) reveal information that would clearly impair the development or use of state of the art technology within a United States weapon system, intelligence gathering system, or counterintelligence system;

- (1) identify a confidential human intelligence source, or reveal information not publicly available about a specific application of an intelligence source or method that remains active;
- (2) reveal information not publicly available that would clearly assist in the development or use of weapons of mass destruction;
- (3) reveal information not publicly available that would clearly impair United States cryptologic systems or activities;
- (4) reveal information not publicly available that would clearly impair the application of state of the art technology within a United States weapon system, intelligence gathering system, or counterintelligence system; or
- (5) violate a statute, treaty, or international agreement.

(c) Any exemption as provided in paragraph (b), above, requires a written justification that identifies the specific information, explains why the information must remain classified for a longer period of time, and establishes a specific date or event for automatic declassification. The agency head or senior agency official shall provide the executive secretary of the Interagency Security Classification Appeals Panel, established in Section 5.4 of this Order, with a copy of such a justification at least 180 days before the information is otherwise subject to automatic declassification under paragraph (a), above. The Panel may direct the agency not to exempt the information or to designate the information for automatic declassification at an earlier date than recommended. The Panel's decision may be appealed to the National Security Council. The information will remain classified while the appeal is pending.

(d) Information exempted from automatic declassification under this Section shall remain subject to the mandatory and systematic declassification review provisions of this Order.

(e) The Secretary of State shall 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 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.

Section 3.5 *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 historically valuable records excepted from automatic declassification under Section 3.4 of this Order. Agencies shall prioritize the systematic review of records based upon:

(1) the degree of researcher interest and the likelihood of declassification upon review; or

(2) recommendations of the Information Security Policy Advisory Committee, established in Section 5.5 of this Order, on specific subject areas for systematic review concentration.

**REVISION OF EXECUTIVE ORDER 12356:
ISSUES AND OPTIONS**



**PHOTOCOPY
PRESERVATION**

**REVISION OF EXECUTIVE ORDER 12356:
ISSUES AND OPTIONS
TABLE OF CONTENTS**

<u>ISSUE</u>	<u>PAGE</u>
DESIGNATION OF ORIGINAL AND DERIVATIVE CLASSIFIERS	1
THE BALANCING TEST	3
SCOPE AND TREATMENT OF FOREIGN GOVERNMENT INFORMATION	6
NUMBER OF CLASSIFICATION LEVELS	8
PORTION MARKING	11
DURATION OF ORIGINAL CLASSIFICATION DECISIONS	13
DECLASSIFICATION OF OLDER INFORMATION	17
ESTABLISHMENT OF DECLASSIFICATION DATABASE	19
SPECIAL ACCESS PROGRAMS	21
INTERAGENCY SECURITY CLASSIFICATION APPEALS PANEL	25
INFORMATION SECURITY POLICY ADVISORY COUNCIL	28

DESIGNATION OF ORIGINAL AND DERIVATIVE CLASSIFIERS

ISSUE: Should classifiers be designated and should we distinguish between original classifiers and derivative classifiers?

OPTION 1: Do not designate either original or derivative classifiers.

PROS:

- Simplifies system by eliminating the need to designate classifiers.
- Eliminates the "myth" that original classifiers actually make classification determinations.

CONS:

- Eliminates all personal accountability for classification decisions.
- Increases the number of people who can classify to everyone who has a clearance.
- Increases training costs tremendously in order for the system to function properly.
- Threatens increased classification.
- Fuels criticism that anyone and everyone may classify information.

OPTION 2: Designate original classifiers but not derivative classifiers.
(Current system.)

PROS:

- Establishes accountability for the original classification process.
- Provides a systemic check on the quality and quantity of original classification decisions.

CONS:

- Creates burden of having to designate original classifiers.
- Suggests all original classification decisions are actually made by high level officials.
- Foregoes accountability for most classification actions, which are derivative.

OPTION 3: Designate both original and derivative classification authorities. (November 10, 1993 draft.)

PROS:

- Provides full accountability for classification decisions.
- Provides a systemic check on the quality and quantity of classification decisions.
- Minimizes costs associated with training nonclassifiers.

CONS:

- Creates burden of having to designate original and derivative classifiers.
- Increases costs associated with training derivative classifiers.

DECISION:

OPTION 1 _____

OPTION 2 _____

OPTION 3 _____

ALTERNATIVE OPTION:

THE BALANCING TEST

ISSUES: Should there be a balancing test; if so, where in the Order; and should its application be discretionary or mandatory?

OPTION 1: No balancing test. (Current system.)

PROS:

- No litigation over application of balancing test.
- Simplifies classification process.

CONS:

- Results in classification of information even though the public interest in disclosure may outweigh the need for secrecy.
- Results in a system more regressive than under the Carter Order.
- Appears to regress from openness goals of PRD 29 and standards set in the leaked August 31 draft.

OPTION 2: Include discretionary balancing test in the declassification process only.

PROS:

- Introduces the concept of balancing at the phase that most often involves the public.
- Minimizes the litigation burden for a system that includes balancing.

CONS:

- Results in uneven application or avoidance because of discretionary language.
- Results in litigation over the application of the balancing test.

OPTION 3: Include a discretionary balancing test at both the time of original classification and the declassification process. (November 10, 1993 draft.)

PROS:

- Introduces the concept of balancing at both ends of the classification process, which has never been done before.
- Minimizes the litigation burden for a system that includes balancing.
- Encourages more thoughtful classification decisions, and less rote classification.

CONS:

- Results in uneven application or avoidance because of discretionary language.
- Results in litigation over the application of the balancing test. (Justice Department believes a balancing test at the front end will invite more difficult litigation.)

OPTION 4: Include a mandatory balancing test during the declassification process.

PROS:

- Goes beyond any balancing provision previously used, promoting the commitment to openness.
- More likely to result in a greater amount of information being declassified.

CONS:

- Mandatory balancing will introduce complicated extended litigation.
- Likely to increase backlog and costs in responding to access requests.
- Adds another step to the declassification process.

OPTION 5: Include a mandatory balancing test at both the time of original classification and the declassification process.

PROS:

- Goes beyond any balancing provision previously used, promoting the commitment to openness.
- More likely to result in a greater amount of information being declassified.
- More likely to result in less information being classified.

CONS:

- Mandatory balancing will introduce complicated extended litigation.
- Likely to increase backlog and costs in responding to access requests.
- Adds another step to the classification and declassification process.

DECISION:

OPTION 1 _____

OPTION 2 _____

OPTION 3 _____

OPTION 4 _____

OPTION 5 _____

ALTERNATIVE OPTION:

SCOPE AND TREATMENT OF FOREIGN GOVERNMENT INFORMATION

ISSUES: What standards define the scope of Foreign Government Information and what level of deference should it receive in the declassification process?

OPTION 1: Information expressly or impliedly received in confidence and no declassification without the foreign government's consent. (Current system.)

PROS:

- Least likely to result in controversy with foreign government.
- Will not require retraining.

CONS:

- Much innocuous information remains classified.
- Prevents bulk or automatic declassification of almost all older materials.
- Appears to regress from openness goals of PRD 29 and standards set in the leaked August 31 draft.

OPTION 2: Information expressly or impliedly received in confidence but declassified in accordance with U.S. standards.

PROS:

- Includes all information a foreign government wants maintained in confidence.
- Does not prevent bulk or automatic declassification of older information.

CONS:

- Classifies some innocuous information.
- Automatic declassification may upset foreign government.
- Appears to regress from openness goals of PRD 29 and standards set in the leaked August 31 draft.

OPTION 3: Information expressly received in confidence and no declassification without the foreign government's consent.

PROS:

- Reduces volume of information being classified.
- Declassification actions unlikely to result in controversy with foreign government.

CONS:

- May limit sharing of information by a foreign government.
- Prevents bulk or automatic declassification of almost all older materials.
- Appears to regress from openness goals of PRD 29 and standards set in the leaked August 31 draft.

OPTION 4: Information expressly received in confidence and declassified in accordance with U.S. standards. (November 10, 1993 draft.)

PROS:

- Reduces volume of information being classified.
- Does not prevent bulk or automatic declassification of older information.

CONS:

- May limit sharing of information by a foreign government.
- Automatic declassification may upset foreign government.

DECISION:

OPTION 1 _____

OPTION 2 _____

OPTION 3 _____

OPTION 4 _____

ALTERNATIVE OPTION:

NUMBER OF CLASSIFICATION LEVELS

ISSUE: How many classification levels should the system include?

OPTION 1: Retain three levels of classification. (Current system.)

PROS:

- Will not require retraining.
- Saves money by enabling lower safeguarding standards for Confidential.
- Provides greatest compatibility with foreign classification systems.

CONS:

- Requires dubious sensitivity distinctions among the various levels.
- Requires the use of subjective modifiers for Top Secret and Secret.
- Appears to regress from openness goals of PRD 29 and standards set in the leaked August 31 draft.

OPTION 2: Two level classification system, Top Secret and Secret with Secret at current threshold of Confidential (damage to national security).

PROS:

- Simplifies the current system.
- Recognizes the large-scale interchangeability of Secret and Confidential in current system.
- Eliminates use of Confidential level to classify information for handling purposes rather than national security.
- Creates greater uniformity in safeguarding standards.

CONS:

- Appears "gimmicky" because the threshold for classification stays the same.
- Requires the use of subjective modifier for Top Secret.
- Requires retraining on the application of the classification levels.
- Requires lowering of safeguarding standards for Secret in order not to increase costs.

OPTION 3: Two level classification system, Top Secret and Secret with Secret at current threshold of Secret (serious damage to national security).

PROS:

- Decreases amount of classified information by raising the threshold.
- Simplifies the current system.
- Creates greater uniformity in safeguarding standards.

CONS:

- Invites wholesale litigation over the meaning of "serious."
- Requires retraining on the application of the classification levels.
- Requires lowering of safeguarding standards for Secret in order not to increase costs.
- Requires the use of subjective modifiers for Top Secret and Secret.

OPTION 4: Single classification level with two levels of protection.

PROS:

- Simplifies current system.
- Eliminates subjective modifiers.
- Creates greater uniformity in safeguarding standards.
- Reduces safeguarding costs if special access programs are fully incorporated into "enhanced protection system."

CONS:

- Appears "gimmicky" because the threshold for classification stays the same and the two level protection scheme looks like a two level classification system.
- Increases safeguarding costs because baseline standards will exceed current standards for protecting Confidential.
- Requires extensive retraining because, on its face, the system is very different from the current system.

DECISION:

OPTION 1_____

OPTION 2_____

OPTION 3_____

OPTION 4_____

ALTERNATIVE OPTION:

PORTION MARKING

ISSUES: Should waivers from the portion marking requirement be allowed? If so, who should have the authority to grant such waivers?

OPTION 1: Allow waivers to be issued by the agency head. (Current system.)

PROS:

- Retains decision making with the agency of origin.
- Facilitates the issuance of waivers.

CONS:

- Results in the issuance of questionable waivers.
- Results in overclassification from failure to portion mark. (GAO has identified failure to portion mark as a major cause of overclassification.)
- Delays the declassification process.
- Creates confusion when non-portion marked information is transmitted outside office of origin.

OPTION 2: Allow waivers to be issued by the Director of ISOO.

PROS:

- Permits waivers with the perception of greater objectivity.
- Allows non-justified requests to be denied.

CONS:

- Results in overclassification from failure to portion mark. (GAO has identified failure to portion mark as a major cause of overclassification.)
- Delays the declassification process.
- Creates confusion when non-portion marked information is transmitted outside office of origin.

OPTION 3: No waivers from portion marking requirement. (November 10, 1993 draft.)

PROS:

- Promotes Government-wide uniformity in classification decisions.
- Reduces overclassification.
- Facilitates the declassification process.
- Eliminates abuses of portion marking waivers.
- Facilitates the derivative classification process.

CONS:

- Eliminates flexibility and increases costs in areas in which waivers are appropriate.
- Slows the original classification process.
- Portion marking, as a process, may result in the disclosure of sensitive information.

DECISION:**OPTION 1** _____**OPTION 2** _____**OPTION 3** _____**ALTERNATIVE OPTION:**

DURATION OF ORIGINAL CLASSIFICATION DECISIONS

ISSUES: How long should information remain classified from the time of its original classification? Should there be exceptions from automatic declassification for specific information?

OPTION 1: Except for information for which the classifier is able to establish a specific date or event for declassification, information shall remain classified until reviewed and declassified by the agency of origin. (Current system, "OADR.")

PROS:

- Allows information to remain classified for as long as sensitivity continues.
- Avoids arbitrary time frames.
- Assuages concerns of foreign governments about premature declassification.

CONS:

- Keeps almost all information classified indefinitely.
- Encourages original classifiers to avoid consideration of duration of sensitivity.
- Undermines credibility of the classification system.
- Requires expenditures to safeguard non-sensitive information.
- Appears to regress from openness goals of PRD 29 and standards set in the leaked August 31 draft.

OPTION 2: Except for information for which the classifier is able to establish an earlier date or event for declassification, set a short fixed time frame (5 to 10 years) at which information is automatically declassified. However, each agency head may establish specific categories of information for which automatic declassification does not apply.

PROS:

- Promotes earlier declassification of information not excepted.
- Gives subject matter experts the opportunity to establish duration.
- Allows excepted information to remain classified for as long as sensitivity continues.
- Avoids arbitrary time frames for excepted information.

CONS:

- Historically, virtually assures that almost all information will be excepted.
- Invites inconsistent application of exception categories by different agencies.
- Keeps almost all information classified indefinitely.
- Requires expenditures to safeguard non-sensitive information.
- Appears to regress from openness goals of PRD 29 and standards set in the leaked August 31 draft.

OPTION 3: Except for information for which the classifier is able to establish an earlier date or event for declassification, set a short fixed time frame (5 to 10 years) at which information is automatically declassified. However, a list of specific categories excepted from automatic declassification shall be listed in the executive order.

PROS:

- Promotes earlier declassification of information not excepted.
- Allows excepted information to remain classified for as long as sensitivity continues.
- Avoids arbitrary time frames for excepted information.
- Diminishes parochial interests and promotes uniformity in the establishment of exception categories.

CONS:

- Agencies will insist on exception categories that will virtually assure that almost all information can be interpreted as falling within an exception.
- Invites inconsistent application of exception categories by different agencies.
- Keeps almost all information classified indefinitely.
- Requires expenditures to safeguard non-sensitive information.
- Appears to regress from openness goals of PRD 29 and standards set in the leaked August 31 draft.

OPTION 4: Except for information for which the classifier is able to establish an earlier date or event for declassification, set a short fixed time frame (5 to 10 years) at which information is automatically declassified. However, agencies may extend classification as information approaches declassification date and declassified information may be reclassified following an access request.

PROS:

- Goes farther toward automatic declassification than any prior system.
- Places the burden on keeping information classified rather than on declassifying information.
- Eliminates inconsistencies associated with the establishment and application of exception categories.
- Allows agencies to extend classification on information that remains sensitive.
- Allows agencies to classify previously declassified information that remains sensitive as long as it has not been disclosed under proper authority.

CONS:

- Arbitrary automatic declassification at short time frames necessitates review before disclosure.
- Sensitive information remaining in files will require agencies to commit significant resources to review for extensions if agencies are afraid to wait for an access review.
- Allowing reclassification invites criticism from requesters that automatic declassification is a gimmick.
- Increases possibility that sensitive information will be disclosed.
- Automatic declassification at short time frames without front-end exception categories invokes agency fear and criticism.

OPTION 5: Except for information for which the classifier is able to establish an earlier date or event for declassification, set a short fixed time frame (5 to 10 years) at which information is automatically declassified. However, agencies may extend classification as information approaches declassification date, but information may not be classified or reclassified following an access request.

PROS:

- Goes farther toward automatic declassification than any prior system.
- Places the burden on keeping information classified rather than on declassifying information.
- Eliminates inconsistencies associated with the establishment and application of exception categories.
- Allows agencies to extend classification on information that remains sensitive.

CONS:

- Classified information that remains sensitive will require agencies to commit significant resources to review for extensions prior to the date of declassification.
- Information that still meets the standards for classification will be declassified and disclosed.
- Automatic declassification at short time frames without front-end exception categories and without possibility of reclassification will invoke intense agency fear and criticism.

DECISION:**OPTION 1** _____**OPTION 2** _____**OPTION 3** _____**OPTION 4** _____**OPTION 5** _____**ALTERNATIVE OPTION:**

DECLASSIFICATION OF OLDER INFORMATION

ISSUES: Should there be a "drop dead" date for declassifying older, permanently valuable information? Should there be exceptions? Should systematic review for declassification be continued?

OPTION 1: Rely exclusively on systematic review at 25 or 30 years for declassifying older records.

PROS:

- Least likely to result in declassification of information that remains sensitive.
- Allows focusing of resources on information most likely to be of interest to researchers.

CONS:

- Systematic review is labor and cost intensive.
- Will never result in declassification of a significant portion of the current classified universe.
- Invites continued criticism that the system is no better than Cold War systems.
- Results in a system more regressive than under the Nixon and Carter Orders.

OPTION 2: Establish a system with automatic declassification at approximately 40 years that includes narrow exceptions while maintaining a systematic review program at approximately 20 to 25 years. (November 10, 1993 draft.)

PROS:

- Provides a declassification system that goes beyond any previously used.
- Results in the automatic declassification of many millions of pages of older records with minimum resource expenditure.
- Allows systematic review to focus on subjects of intense researcher interest at an earlier time period.

CONS:

- Exceptions may limit volume of automatic declassification.
- Extremely difficult to come up with comprehensive list of narrow exceptions.
- Reference to 40 years invites criticism from both sides (too long, too short).
- Automatic declassification may result in the disclosure of information that remains sensitive.

OPTION 3: Establish a system with automatic declassification of all information at approximately 60 years (no exceptions) while maintaining a systematic review program at approximately 20 to 25 years.

PROS:

- Provides a declassification system that goes beyond any previously used.
- Results in the automatic declassification of all older records with minimum resource expenditure.
- Allows systematic review to focus on subjects of intense researcher interest at an earlier time period.
- Simple system to implement.

CONS:

- Reference to 60 years will invite strong criticism from openness advocates, while not assuaging security concerns of the opposing side.
- Automatic declassification may result in the disclosure of information that remains sensitive.

DECISION:

OPTION 1 ____

OPTION 2 ____

OPTION 3 ____

ALTERNATIVE OPTION:

ESTABLISHMENT OF DECLASSIFICATION DATABASE

ISSUE: Should a Government-wide database of declassified information be established?

OPTION 1: No database.

PROS:

- Avoids the significant costs of establishing a database.
- Avoids the threat to inadvertent disclosure that a database represents.

CONS:

- Inconsistent declassification decisions will continue to be made and information will remain classified unnecessarily.
- Ignores the use of technology to enhance declassification.
- Invites horror stories about inconsistent declassification.
- Continues inefficiency and redundancy in reviews of the same or similar information.
- Appears to regress from openness goals of PRD 29 and standards set in the leaked August 31 draft.

OPTION 2: Establish database that involves discretionary agency participation.

PROS:

- Less expensive to establish than a mandatory system.
- Establishes first step toward creation of a more comprehensive database.

CONS:

- A discretionary system with limited participation results in an incomplete system.
- Inconsistent declassification decisions will continue to be made and information will remain classified unnecessarily.
- Invites horror stories about inconsistent declassification.
- Continues inefficiency and redundancy in reviews of the same or similar information.
- Appears to regress from openness goals of PRD 29 and standards set in the leaked August 31 draft.

OPTION 3: Establish a mandatory database.

PROS:

- Declassification decisions will be consistent throughout Government.
- More information will be declassified.
- Declassification process will be more efficient and less reliant on human resources.
- Unclassified portions of database may be available for public use.

CONS:

- Will involve significant start-up costs.
- Poses a threat of inadvertent disclosure.
- Establishment must overcome tremendous agency reluctance.

DECISION:

OPTION 1 _____

OPTION 2 _____

OPTION 3 _____

ALTERNATIVE OPTION:

SPECIAL ACCESS PROGRAMS

ISSUES: Should Special Access Programs (SAPs) exist; if so, should we eliminate acquisition SAPs? What level of oversight is necessary?

OPTION 1: Retain SAP system as it currently exists: Any agency head may create; no limits on subject; oversight limited to selected agency personnel and ISOO Director only.

PROS:

- Maximizes protection of very sensitive or vulnerable programs.
- Retains agency hegemony over information deemed most critical to that agency.

CONS:

- Undermines the credibility of the regular classification system.
- Absence of outside oversight invites perception of abuse.
- Programs are generally far more costly than regular programs.
- Invites suspicion, criticism and "horror stories."

OPTION 2: Retain current options for application but increase external oversight.

PROS:

- Maximizes protection of very sensitive or vulnerable programs.
- Increased oversight should minimize abuses.

CONS:

- Undermines the credibility of the regular classification system.
- Programs may still be more costly than regular programs.
- Suspicion, criticism and "horror stories" may diminish but will not go away.

OPTION 3: Retain current options for application but increase external oversight and require outside approval for continuation over an extended period. (November 10, 1993 draft.)

PROS:

- Maximizes protection of very sensitive or vulnerable programs.
- Increased oversight should minimize abuses.
- Provides an external mechanism to limit SAPs that continue over an extended period.
- Increases credibility of approved SAPs if outside panel appears to be objective.

CONS:

- Undermines the credibility of the regular classification system.
- Programs may still be more costly than regular programs.
- Suspicion, criticism and "horror stories" may diminish but will not go away.
- Outside scrutiny poses a slightly greater security risk; adds a layer of bureaucracy; and may be viewed as a gimmick.

OPTION 4: Eliminate acquisition SAPs and increase external oversight for other SAPs.

PROS:

- Reduces the number of SAPs.
- Eliminates the SAPs perceived to be the most expensive and the most susceptible to abuse.
- Increased oversight should minimize abuses.
- Reduces security costs.

CONS:

- Increases risk of compromise of state of the art technology.
- May shorten or diminish a weapon system's combat effectiveness.
- Will create intense reaction within the military services.

OPTION 5: Eliminate SAPs, incorporate SAPs into specially protected programs of a single level classification system with dual levels of protection.

PROS:

- Simplifies the system.
- Standardizes levels of protection.
- Reduces costs of some systems.
- Increases credibility of regular classification system.

CONS:

- Increases risk of compromise of state of the art technology.
- May shorten or diminish a weapon system's combat effectiveness.
- Will create intense reaction within the military services.
- Necessitates retraining and adoption of new nomenclature.

OPTION 6: Eliminate all SAPs.

PROS:

- Reduces criticism of the security classification system.
- Reduces security costs.
- Forces agencies to enforce need-to-know.

CONS:

- Increases risk of compromise of state of the art technology and intelligence sources and methods.
- May shorten or diminish a weapon system's combat effectiveness.
- Will create intense reaction within the military services and intelligence community.

DECISION:

OPTION 1 _____

OPTION 2 _____

OPTION 3 _____

OPTION 4 _____

OPTION 5 _____

OPTION 6 _____

ALTERNATIVE OPTION:

INTERAGENCY SECURITY CLASSIFICATION APPEALS PANEL

ISSUES: Should there be an appeals panel to review an agency's actions on classification challenges and mandatory review requests? If so, who should be on the panel?

OPTION 1: No panel.

PROS:

- Preserves agency discretion regarding agency information.
- Avoids costs associated with additional bureaucratic layers.

CONS:

- No external mechanism within the executive branch to hear classification challenges or access appeals.
- Appears to regress from openness goals of PRD 29 and standards set in the leaked August 31 draft.
- May result in more information remaining classified unnecessarily.

OPTION 2: Establish appeals panel comprised of senior executives within the civil service.

PROS:

- Establishes an outside entity to hear challenges and appeals.
- Increases possibility of greater openness.
- Increases public's recourse and perception of objectivity in decisions regarding classification and declassification.
- Keeps participation at level of management more likely to be familiar with the system and with more time to devote to the task.

CONS:

- Panel removes decisions from the agency of origin which is most likely to have the greatest amount of expertise in the subject matter.
- Establishing a panel adds a bureaucratic layer.
- Staff work to prepare for panel decisions is expensive and time consuming.
- Resources devoted to external appeals may increase internal backlog of individual requests.

OPTION 3: Establish appeals panel comprised of top management political appointees.

PROS:

- Establishes an outside entity to hear challenges and appeals.
- Increases possibility of greater openness.
- Increases public's recourse and perception of objectivity in decisions regarding classification and declassification.
- Participation at level of management perceived to be more objective than career bureaucrats.

CONS:

- Panel removes decisions from the agency of origin which is most likely to have the greatest amount of expertise in the subject matter.
- Establishing a panel adds a bureaucratic layer.
- Staff work to prepare for panel decisions is expensive and time consuming.
- Resources devoted to external appeals may increase internal backlog of individual requests.
- Top management may not have the expertise or time to devote to this task.

OPTION 4: Establish appeals panel comprised of non-executive branch personnel appointed by the President.

PROS:

- Establishes an outside entity to hear challenges and appeals.
- Increases possibility of greater openness.
- Increases public's recourse and perception of objectivity in decisions regarding classification and declassification.
- Participation of non-Government personnel perceived to be the most objective.

CONS:

- Panel removes decisions from executive branch expertise.
- Establishing a panel creates a bureaucratic layer.
- Staff work to prepare for panel decisions is expensive and time consuming.
- Resources devoted to external appeals may increase internal backlog of individual requests.
- Lack of expertise more likely to result in poor or delayed decisions.
- Use of non-Government personnel increases personnel security costs and poses greater risk of inadvertent or unauthorized disclosure.

DECISION:**OPTION 1** _____**OPTION 2** _____**OPTION 3** _____**OPTION 4** _____**ALTERNATIVE OPTION:**

INFORMATION SECURITY POLICY ADVISORY COUNCIL

ISSUES: Should there be an advisory council consisting of Government and non-Government representatives to advise on classification matters? What should be the extent of the council's function?

OPTION 1: No council.

PROS:

- Avoids costs associated with creating and supporting a council.
- Keeps responsibility for classification issues within the agencies that create the information.

CONS:

- No formal mechanism within the executive branch to hear recommendations from interested members of the public on the classification system.
- Appears to regress from openness goals of PRD 29 and standards set in the leaked August 31 draft.

OPTION 2: Establish a council comprised of Government and non-Government representatives whose function is solely advisory.

PROS:

- Allows non-Government individuals an opportunity to participate in classification policy.
- Increases possibility of greater openness.
- Increases public's perception of objectivity in classification policy.

CONS:

- Council may diminish the flexibility of executive branch officials to establish policy.
- Establishing a council runs counter to the Administration's order to reduce the number of advisory committees.
- Staff work to support the council increases costs.

OPTION 3: Establish a council comprised of Government and non-Government representatives authorized to establish Government-wide policy priorities, e.g., mandate topics for declassification review.

PROS:

- Increases possibility of greater openness.
- Increases public's recourse and perception of objectivity in decisions regarding classification and declassification.
- Allows non-Government individuals an opportunity to participate in classification policy.

CONS:

- Council may diminish the flexibility of executive branch officials to establish policy.
- Council removes decisions from the agency of origin which is most likely to have the greatest amount of expertise in the subject matter.
- Establishing specific priorities, e.g., declassification topics, diverts resources, which delays processing individual requests and appeals.
- Staff work to support the council increases costs.
- Establishing a council creates an additional bureaucratic layer.
- Use of non-Government personnel increases personnel security costs and poses greater risk of inadvertent or unauthorized disclosure.

DECISION:

OPTION 1 _____

OPTION 2 _____

OPTION 3 _____

ALTERNATIVE OPTION: