



Homeland Security

April 3, 2008

MEMORANDUM FOR: Stephen J. Hadley
Assistant to the President for National Security Affairs

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FROM: Michael Chertoff 

SUBJECT: Recommendations from the Public Interest
Declassification Board

I commend the members of the Public Interest Declassification Board for their thorough analysis of the declassification system and for their innovative and insightful recommendations for improvement, as published in the December 2007 report to the President, "Improving Declassification." The Department of Homeland Security (b)(5)

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Attached you will find the Department's review of the individual issues and recommendations.

If you have any questions, please contact my office or John J. Young, Chief of the Administrative Security Division in the Office of the Chief Security Officer at

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Enclosure

**Department of Homeland Security Response to Recommendations
From The Public Interest Declassification Board
March 2008**

ISSUE No. 1: Understanding What the Declassification System is Accomplishing. There are at least eight ways by which security classified national security information may become declassified, including through Freedom of Information Act requests and through automatic declassification under Executive Order 12958. The Board presents several recommendations that would increase the efficiency of the system as a whole.

RECOMMENDATIONS

1. The Board recommends establishing by Executive Order or by statute a National Declassification Program under the Archivist of the United States.
2. A new National Declassification Center (NDC) to be established within the National Archives and Records Administration (NARA) should administer the program, and the Archivist should establish a new position – Deputy Archivist for Declassification Policy and Programs – to oversee all aspects of the NDC’s operations.
3. Departments and agencies should be required to consolidate all of their declassification activities in one office or bring them under the control of one office.
4. All departments and agencies should be required to record declassification decisions on a single computerized system, regardless of the avenue by which declassification occurs and within five years to make these data bases available to the public containing at least pertinent information such as the titles of the documents and the locations where they are available.
5. All departments and agencies should report to the NDC at least annually what they have declassified.

DHS RESPONSE: (b)(5)

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ISSUE No. 2: Prioritizing the Declassification Review of Historically Significant Information. There is no satisfactory means at present of identifying historically significant information within the vast body of information that is being reviewed and

declassified. Accordingly, no priority is given to the declassification and release to the public of such information.

RECOMMENDATIONS

1. To ensure that historically significant classified records are given priority at the 25-year review point, both in terms of what records are taken first and in terms of the quality of the review they receive, the President should promulgate by Executive order, or other appropriate issuance, a system for identifying such information.
2. A board consisting of prominent historians, academicians, and former Government officials would be appointed by the Archivist to determine which events or activities of the U.S. Government should be considered historically significant from a national security and foreign policy standpoint, for a particular year. The board would require input of agency records managers and historians as well as NARA's archivists, to include those within the Presidential libraries, to determine the specific records series that most likely contain the records about the topics the board identifies as historically significant.
3. Once the records series determined to be "likely to contain information of historical significance" had been identified and approved, these records would receive the highest priority for declassification.
4. The Archivist of the United States, through the NDC, would oversee the implementation of this process within affected departments and agencies, and would establish within the NDC, a mechanism for resolving disagreements that might arise in the course of such implementation.
5. If this system were adopted, E.O. 12958, as amended, would need to be amended to allow departments and agencies to give priority to the review of classified records deemed to be historically significant as they reach 25 years of age.
6. It is recognized that "routine" records may still have significance, especially to particular individuals. Such records would still be subject to timely review for declassification in response to a specific access demand (e.g. a FOIA or MDR request).

DHS RESPONSE: (b)(5)
(b)(5)



ISSUE No. 3: Expediting the Declassification of Presidential Records. The declassification of Presidential records takes far too long under the current system.

RECOMMENDATIONS

1. The Archivist should establish a single center within the Washington, D.C. metropolitan area, to house all future classified Presidential records from the end of a

Presidential administration until their eventual declassification, at which time, they would be physically transferred to the appropriate Presidential library and made available to the public.

2. If establishing a separate center for the storage and review of classified Presidential records were not considered feasible, then the new NDC should consider establishing as part of its mechanism for the review of classified documents with multiple equities, an office or division dedicated to the reviews requested by Presidential libraries.
3. If neither of these options is considered feasible, Congress should consider amending the Presidential Records Act to provide, similar to the FRUS statute, that departments and agencies will give priority to the declassification of Presidential records over other declassification reviews, except those otherwise made pursuant to law, e.g. the FOIA or other searches mandated by statute.
4. In the absence of statutory change, a similar policy could be set forth in Executive order, or other Executive branch policy issuance.
5. If the current decentralized system is retained without structural change, NARA needs to consider means of augmenting the archival capabilities at Presidential libraries, e.g. by increasing their staffs, contracting out, granting security clearances to volunteers, to accelerate the archival processing of classified Presidential records.

DHS RESPONSE: (b)(5)

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ISSUE No. 4: Preserving a Capability within Agencies to Review Records less than 25 Years of Age. Agencies typically allocate their declassification review personnel to whatever the pressing need may be at the time, which often leaves insufficient resources to perform declassification reviews of records *less than 25 years old* that they know to be historically significant.

RECOMMENDATIONS

1. Either pursuant to uniform guidelines issued by the National Declassification Center or pursuant to an appropriate Executive branch issuance, agencies should be directed to dedicate some specific percentage of their declassification review personnel to conducting reviews of records less than 25 years old that they know to be historically significant and are reasonably likely to provide the public with meaningful results.
2. The Archivist should annually recognize in some appropriate fashion the agency or agencies that declassify and release to the public on their own initiative historically significant information less than 25 years old.

DHS RESPONSE: (b)(5)

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ISSUE No. 5: Bringing Greater Uniformity, Consistency, and Efficiency to the Declassification Process. All executive departments and agencies of the Federal Government are bound by the Order on security classification, but, when it comes to their declassification programs, there is a wide disparity in terms of their implementation, including the level of resources being applied to such activities, training, use of technology, interface with the public, and approach to declassification reviews.

RECOMMENDATIONS

1. The President, by executive order or other appropriate issuance, should charge the new NDC with prescribing uniform guidelines to govern the declassification activities of all executive departments and agencies.
2. In addition to prescribing uniform guidelines, the NDC should be responsible for providing "services of common concern" for the declassification activities of the Federal Government where appropriate, to include the review of classified documents that contain multiple equities, as well as the review of classified information contained in special media and electronic records.
3. The NDC should also be authorized to conduct declassification reviews for other departments and agencies on a reimbursable basis.
4. The Order should be amended to prescribe a uniform policy to govern the subsequent review of all exempted records.

DHS RESPONSE: (b)(5)
(b)(5)

ISSUE No. 6: Expediting the Declassification Reviews of Multiple Equity Documents. The declassification of documents involving "multiple equities" (i.e. documents originated by one agency that contain information classified by one or more other agencies) has proven especially difficult and time-consuming.

RECOMMENDATIONS

1. The centralized approach currently being taken pursuant to the National Declassification Initiative needs to be made permanent and institutionalized, preferably within the new National Declassification Center, and departments and agencies that have "equities" in such reviews should be required to provide adequate personnel to conduct them.
2. While the Board recognizes that as a practical matter, the "automatic declassification" deadline for multiple equity documents may have to be extended by the President, it recommends that the deadline be extended no more than once and only after the Archivist has presented him with a comprehensive and realistic plan, agreed to by the

departments and agencies involved, for achieving the objective within the time frame contemplated.

DHS RESPONSE: (b)(5)

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ISSUE No. 7: Performing Declassification Review Involving Special Media and Electronic Records. Too little has been done with regard to meeting the deadline of December 31, 2011, for the review of classified information contained in special media records as well as developing plans to cope with the truly monumental problem looming on the horizon: the review of classified information contained in electronic records.

RECOMMENDATIONS

1. NARA should be formally charged with leading a special effort, within the new National Declassification Center, for analyzing the special media records problem and for creating a governmentwide plan for addressing it to include declassification and access.
2. As part of this process, the Center needs to consider at the outset how much classified information stored in special media is permanently valuable according to 44 U.S.C. and the PRA, and thus requires preservation.
3. The Center might consider whether the declassification review of special media records at age 25 or older ought to be limited to, or give priority to, the special media records containing historically significant information.
4. The Center should also consider what "services of common concern" it might be able to provide on a reimbursable basis to help agencies cope with the special media records problems, such as the procurement of obsolete hardware and software for the use of all participating agencies.
5. The Center should serve a similar role with respect to the review of classified electronic records, putting uniform policies in place to ensure activities of departments and agencies are synchronized and standardized with what NARA itself is planning in terms of the Electronic Records Archive, i.e., digitizing its archival records and making them available to the public electronically.

DHS RESPONSE: (b)(5)

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ISSUE No. 8: Re-views of Previously Disclosed Information. In recent years, there have been several instances where agencies have discovered that records created by other agencies (but containing their classified information) have been declassified and made available to the public at the National Archives without their having had an opportunity to review the records themselves for declassification

RECOMMENDATIONS

1. Such action should be taken only when the potential harm to the national security from continued public disclosure is clear and convincing (after all, these records are most often far more than 25 years old), and the potential for future harm can be significantly ameliorated by withdrawing the records.
2. Any withdrawal of records that were previously available to the public at the National Archives should require the approval of the Archivist; this concept should be codified in the Executive Order.
3. The Order or pertinent statutes should be amended to provide that no member of the public shall be criminally prosecuted, or suffer any other adverse consequences, for maintaining, using, or disseminating a record, or information contained in a document, that they had lawfully obtained from the National Archives or any other agency of the Federal Government.
4. These reviews should be undertaken only where there is a clear indication (and subsequent showing) that the benefits to our national security are worth the costs.

DHS RESPONSE: (b)(5)

(b)(5)

ISSUE No. 9: Dealing with other Exempted Information and the Delays Entailed in Archival Processing. Because a record has been declassified does not necessarily mean it will be made available to the public any time soon.

RECOMMENDATIONS

1. Records identified as being of historical significance should undergo a concurrent review for personal privacy of "controlled but unclassified" information at the same time as the review for declassification is conducted.
2. Standardization is required as to how Executive branch agencies handle "controlled unclassified information" at the end of its life-cycle.
3. The Archivist should develop a personnel plan, to be funded as part of NARA's annual budget submission to the Administration (and later presentation to Congress), that would address the current archival processing backlog and to otherwise enable the National Archives in the future to fully process all declassified records within five years of their declassification so that they may be released to the public.

DHS RESPONSE: (b)(5)

(b)(5)

ISSUE No. 10: Exercising Discretion for Disclosure in Exceptional Cases. The latitude given departments and agencies by the Order to declassify information when the public interest in disclosure outweighs the risk of damage is not being seriously exercised.

RECOMMENDATIONS

1. The Order should be amended to provide that where the entity that originally requested declassification review of the record in question is a Government entity (including a Presidential library, the office that prepares the Foreign Relations of the United States (FRUS) series, a congressional committee, or a court) who is seeking disclosure of the record for a public purpose, *and that entity* objects to the continued classification of the record on the grounds that the public interest outweighs the risk of damage caused by disclosure, it ought to trigger a referral to the senior agency official for "weighing of the interests" under this provision of the Order.

DHS RESPONSE: (b)(5)

(b)(5)

ISSUE No. 11: Removing an Impediment to Comprehensive Review. Not infrequently, requests to agencies from individual members of the public actually hamper the agency's ability to make historically significant records available to the public in general.

RECOMMENDATIONS

1. In the view of the Board, when an agency receives a request from an individual for a particular document or documents that are part of a larger collection of historically significant documents currently undergoing review for declassification, the agency receiving the request should be permitted to hold such request in abeyance for up to

one year, provided it advises the individual requestor that the document or documents at issue are part of a larger collection undergoing declassification review and advises the requestor when the results of the larger declassification review are expected to be made available.

DHS RESPONSE: (b)(5)

(b)(5)

ISSUE No. 12: Expanding the Uses and Roles of Historians and Historical Advisory Boards. Relatively few agencies with responsibilities in the national security currently employ historians and/or maintain historical advisory boards.

RECOMMENDATIONS

1. Amend the Order to require that all departments and agencies with significant classification activity establish historical advisory boards – composed of experts from inside and outside the agency – who report to the head of the agency.
2. By appropriate Executive branch issuance, require all departments and agencies with responsibilities in the national security area to hire an appropriate number of historians, either to select classified records of historical significance for declassification review and publication (as part of the department or agency’s ongoing declassification initiatives), or to write historical accounts based upon the department or agency’s classified holdings.
3. The declassification review of historical accounts written by agency historians ought to take place 25 year after the most recent event considered in the account, rather than 25 years after the historical account is written.

DHS RESPONSE: (b)(5)

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ISSUE No. 13: Clarifying the Status and Treatment of Formerly Restricted Data (FRD). In practice, information identified by statute as Formerly Restricted Data (FRD) remains outside the scope of information that can be requested by the public and is not subject to the classification review requirements of the Order.

RECOMMENDATIONS

1. Preferably, the President should make clear by an amendment to the Order that FRD should be treated as “defense information” and should be safeguarded and declassified in accordance with the Order, thereby providing the public with the same rights of access that it has to other information classified pursuant to the Order.
2. If, on the other hand, the President believes that the information currently designated as FRD, because of its particular sensitivity, should continue to remain outside the classification system, consideration should be given to transitioning FRD to the

normal classification system as it reaches 25 years of age (and presumably has become less sensitive).

3. If the President determines that the current system should remain as it is, the Board recommends that an appropriately cleared representative of the public, familiar with the issues, should participate in the Government's periodic deliberations with respect to what should remain FRD, i.e. excluded from the normal classification and/or release to the public. In addition, DOD, DOE, and State should promulgate clear and consistent guidance to the larger declassification community with respect to what constitutes FRD, e.g. former storage locations of nuclear weapons, which may be identified in permanent historical records more than 25 years old.

DHS RESPONSE: (b)(5)

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ISSUE No. 14: The Handling of the President's Daily Brief. The President's Daily Brief (PDB), which is prepared each day by the CIA, has not been retained as part of the records of the White House since the beginning of the Reagan administration, which deprives historians and researchers (and ultimately the public) of an ability to learn what a particular President was being told by the Intelligence Community regarding the world situation.

RECOMMENDATIONS

1. The President should clarify as a matter of policy that he will not foreclose declassification review of the PDB by claiming "executive privilege" for it. He or she may reserve the right as a former President to assert executive privilege with respect to particular documents that are being considered for release by his or her Presidential library.
2. The President should direct that the PDB be retained by the White House as a Presidential record under the Presidential Records Act. It can then later be reviewed for declassification at the request of the Presidential library concerned.
3. The President should direct that the PDBs that were not allowed to remain in the Presidential materials of past Presidents be provided to each Presidential library. Before they are sent to the Presidential library, they should undergo a declassification review. The Presidential library should maintain the PDBs as a distinct series.

DHS RESPONSE: (b)(5)

(b)(5)

ISSUE 15: Declassification Reviews of Certain Congressional Records. The declassification procedures for classified records created by committees of Congress, particularly classified reports and closed hearing transcripts, are irregular and limited.

RECOMMENDATIONS

1. Formal procedures should be established for the declassification review of classified committee reports and hearing transcripts created by committees within their respective bodies.
2. If a new National Declassification Center is established it should have responsibility for review of congressional records.

DHS RESPONSE: (b)(5)

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