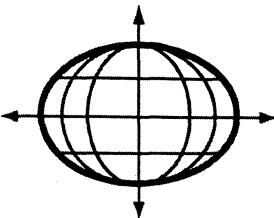


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**SHAFR's Recommendations for Reform of the Executive Order on National Security Information Policy**

The continued classification of so many historical records held by the U.S. government has created a major crisis of government accountability. Declassification is currently a series of autonomous fiefdoms, operating by their own agency instructions rather than by a government-wide policy. The result has become chaos. The U.S. National Archives and Records Administration (NARA) has jurisdiction over millions of pages of classified presidential and federal agency records dating back to the early years of the Cold War, yet it lacks authority to declassify them. NARA has centralized control of the classified presidential records but no known plans to initiate their systematic declassification review.

President Barack Obama established NARA's National Declassification Center (NDC) in to streamline declassification processes, facilitate quality-assurance measures, and implement standardized training for declassification of records. It is routinely deluged with huge numbers of classified records (both paper and electronic) transferred whose processing it must balance with a backlog of thousands of declassification requests for specific records. It lacks both the resources and the authority to take timely action on any of these responsibilities. Moreover, complicated coordination requirements delay timely action on Freedom of Information Act (FOIA) and Mandatory Declassification Review (MDR) requests.

The Executive Order (E.O.) on national security information policy that President Obama signed in 2009 is long out of date, and its language gives undue scope to the agencies to overclassify and even block declassification of historical records. The Department of Defense can unilaterally withhold from declassification historical records that are 50 years old or older on the grounds that declassification will hurt U.S. diplomatic relations with another country.

The Interagency Security Declassification Panel (ISCAP) makes important decisions on final MDR appeals, and it also has a tremendous backlog of cases. Its decisions reflect careful deliberations and have important implications. But ISCAP, too, confronts a tremendous backlog of cases. Further, its decisions do not become precedents that could inform and facilitate future declassifications by the agencies.

Moreover, rules governing Formerly Restricted Data under the Atomic Energy Act enable the Department of Defense and the Department of Energy to preserve the classified status of overseas deployments of nuclear weapons from the earliest days of the Cold War. Presently, the NDC and ISCAP lack the technology they need to share declassified documents with agencies; instead of e-mailing them they must use compact discs or couriers. In addition they lack the technology to hold classified online meetings with other agencies. To a great extent this is a

NARA budget issue outside of the scope of the Executive Order, but an E.O. should include hortatory language to encourage NARA to make improvements and initiate necessary action.

## **RECOMMENDATIONS**

To address these shortcomings of current declassification policy, a revised Executive Order should include arrangements to expedite the release of classified historical records and to provide ground rules to help agencies prepare for transferring their records to NARA. For the purpose of achieving these goals, SHAFR supports the following improvements in the Executive Order:

- To reduce future backlogs, the E.O. should establish a “drop dead” date for automatic declassification of records over 30 years old. Exceptions should be limited and expressed explicitly and narrowly. The burden should be placed on the agencies to justify withholding a record from automatic declassification.
- The agencies should expedite automatic declassification so that it minimizes the need for the public to file FOIA or MDR requests. Any exemptions from automatic declassification will require the approval of the National Security Advisor to the President and should be made publicly available.
- The National Declassification Center must be vested with the authority to declassify information subject to automatic declassification without having to refer the records back to the originating agency. The NDC must be authorized to make decisions on MDR and FOIA appeals involving NARA records. Toward this end, included on the NDC staff should be representatives from all agencies that generate classified documents. Collaboration between these representatives and NARA personnel should enable the NDC to make decisions on the spot.
- ISCAP decisions should be incorporated into agency declassification guidance. This incorporation must be mandatory.
- The Departments of Energy and Defense should be required to begin reviewing Formerly Restricted Data and converting and redefining it either as Restricted Data or as national security information. This is necessary to differentiate information about historical locations of nuclear weapons that should be treated differently than technical information about nuclear weapon use.
- The use of the foreign relations exemption (exemption 6) by agencies and offices other than the State Department and National Security Council should be limited by requiring them to seek the Department’s approval before applying it to archival documents. This procedure will prevent abuse of the exemption in declassification decisions on historical records.
- NARA should be directed to initiate the systematic review of classified presidential records, potentially modeled after the CIA’s former Remote Archives Capture (RAC) program.

- NARA should receive sufficient resources to build up staff support for NDC and ISCAP staff and to secure up-to-date technology so that the NDC and ISCAP can better share classified information with other agencies.
- A specific procedure must be formulated for the public to seek declassification of properly classified information that is of high public interest along the lines proposed by the Federation of American Scientists. This calls for a procedure to allow the public to request declassification of properly classified records from an entity other than the original classification authority (OCA), similar to ISCAP.
- Along these lines, OCA must be given the option not to classify information in cases where the public interest outweighs the potential harm from disclosure. OCA must also be granted the discretion to declassify information that has been the subject of unauthorized disclosure.
- Because the effectiveness of these recommendations requires oversight with the authority to implement its decisions, the Executive Order must designate an executive agent to oversee declassification policy, standardize procedures, and review and approve agency guidelines. The logical source for the executive agent is the Information Security Oversight Office (ISOO) or the Office of the Director of National Intelligence (ODNI).