

administrative disclosure determination within a reasonable number of days prior to the specified disclosure date.

[55 FR 9318, Mar. 13, 1990]

Subpart C—Executive Order 12958 Provisions

SOURCE: 64 FR 25430, May 12, 1999, unless otherwise noted.

§ 171.20 Definitions.

As used in this subpart, the following definitions shall apply:

(a) *National security* means the national defense or foreign relations of the United States.

(b) *Information* means any knowledge that can be communicated or documentary material, regardless of its physical form or characteristics, that is owned by, produced by or for, or is under the control of the United States Government.

(c) *Control* means the authority of the agency that originated the information, or its successor in function, to regulate access to the information.

(d) *Classified national security information* (hereafter classified information) means information that has been determined pursuant to this Executive Order 12958 or any predecessor Order to require protection against unauthorized disclosure and is marked to indicate its classified status when in documentary form.

(e) *Foreign government information* means:

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

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

(3) Information received and treated as “foreign government information” under the terms of a predecessor Order.

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

(g) *Original classification* means an initial determination that information requires, in the interest of national security, protection against unauthorized disclosure.

(h) *Original classification authority* means an individual authorized in writing, either by the President, or by agency heads or other officials designated by the President, to classify information in the first instance.

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

(j) *Agency* means any “executive agency” as defined in 5 U.S.C. 105, and any other entity within the executive branch that comes into the possession of classified information.

(k) *Senior agency official* means the official designated by the agency head under section 5.6(C) of this Executive Order 12958 to direct and administer the agency’s program under which information is classified, safeguarded, and declassified.

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

(m) *Damage to the national security* means harm to the national defense or foreign relations of the United States from the unauthorized disclosure of information, to include the sensitivity, value and utility of that information.

(n) *Presidential appointees* includes former officials of the Department of State or other U.S. Government agencies who held policy positions and were appointed by the President, by and with the advice and consent of the Senate, at the level of Ambassador, Assistant Secretary of State or above. It does not include Foreign Service Officers as a class or persons who merely received assignment commissions as Foreign

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Service Officers, Foreign Service Reserve Officers, Foreign Service Staff Officers and employees.

§ 171.21 Access to records.

(a) *Request for mandatory classification review.* For a request for classified records to be processed under section 3.6 of E.O. 12958, it must describe the record(s) with sufficient specificity to enable the agency to locate the record(s) with a reasonable amount of effort. Whenever a request does not reasonably describe the record(s), the Department shall notify the requester that no further action will be taken unless additional information is provided, or the scope of the request is narrowed.

(b) *Mandatory review.* A request for declassification under the Executive Order 12958 is termed a mandatory review; it is separate from and different than a request made under the Freedom of Information Act (FOIA). When a requester submits a request under both mandatory review and FOIA, the Department shall require the requester to elect one or the other. If the requester fails to elect one or the other, the request will be treated as a FOIA request unless the materials requested are subject only to mandatory review.

(c) *Scope.* All information classified under this or predecessor orders shall be subject to declassification review upon request by a member of the public, a government employee or agency, with the following exceptions:

(1) Information exempted from search and review under the Central Intelligence Information Act;

(2) Information which is the subject of pending litigation;

(3) Information which has been reviewed and withheld within the past two years;

(4) Information originated by the incumbent President; the incumbent President's White House staff; committees, commissions or boards appointed by the incumbent President; or other entities within the Executive Office of the President that solely advise and assist the incumbent President. If the information requested is the subject of pending litigation, or has been reviewed for declassification and withheld within the past two years, the De-

partment will inform the requester of these facts and of the requester's appeal rights. The Archivist of the United States shall establish procedures for the declassification of Presidential or White House materials accessioned into the National Archives or maintained in the Presidential libraries.

(d) The Department may refuse to confirm or deny the existence or non-existence of requested information whenever the fact of its existence or nonexistence is itself classified.

(e) *Processing.* In responding to mandatory review requests, the Department shall either make a prompt declassification determination and notify the requester accordingly, or inform the requester of the additional time needed to process the request. The Department shall ordinarily make a final determination within 180 days from the date of receipt. When information cannot be declassified in its entirety, the Department will make reasonable efforts to release those declassified portions of the requested information that constitute a coherent segment.

(f) *Other agency records.* When the Department receives a request for records in its possession that were originated by another agency, it shall refer the request and the pertinent records to the originating agency unless that agency has agreed that the Department may review the records in accordance with declassification guides or guidelines provided by the originating agency. The originating agency shall communicate its declassification determination to the Department.

(g) *Foreign government information.* When foreign government information is being considered for declassification, the declassifying agency is the agency that originally received or classified the information. The declassifying agency shall:

(1) Determine whether the information is subject to a treaty or international agreement that would prevent its declassification;

(2) Determine whether the information is subject to section 1.6(d) (5), (6) or (8) of the Executive Order 12958;

(3) Consult with any other concerned agencies;