

REPORT TO THE
PRESIDENT

INFORMATION SECURITY OVERSIGHT OFFICE



2008

Authority

Executive Order 12958, as amended, “Classified National Security Information,” and Executive Order 12829, as amended, “National Industrial Security Program.” The Information Security Oversight Office (ISOO) is a component of the National Archives and Records Administration (NARA) and receives its policy and program guidance from the National Security Council (NSC).

Mission

ISOO oversees the security classification programs in both Government and industry and reports annually to the President on their status.

Functions

- Develops implementing directives and instructions.
- Maintains liaison with agency counterparts and conducts on-site reviews and special document reviews to monitor agency compliance.
- Develops and disseminates security education materials for Government and industry; monitors security education and training programs.
- Receives and takes action on complaints, appeals, and suggestions.
- Collects and analyzes relevant statistical data and, along with other information, reports them annually to the President.
- Serves as spokesperson to Congress, the media, special interest groups, professional organizations, and the public.
- Conducts special studies on identified or potential problem areas and develops remedial approaches for program improvement.
- Recommends policy changes to the President through the NSC.
- Provides program and administrative support for the Interagency Security Classification Appeals Panel (ISCAP).
- Provides program and administrative support for the Public Interest Declassification Board (PIDB).
- Reviews requests for original classification authority from agencies.
- Chairs interagency meetings to discuss matters pertaining to both Executive orders.
- Reviews and approves agency implementing regulations and agency guides for systematic declassification review.

Goals

- Promotes and enhances the system that protects the national security information that safeguards the American Government and its people.
- Provides for an informed American public by ensuring that the minimum information necessary to the interest of national security is classified and that information is declassified as soon as it no longer requires protection.
- Promotes and enhances concepts that facilitate the sharing of information in the fulfillment of mission-critical functions related to national security.
- Provides expert advice and guidance pertinent to the principles of information security.

Letter to the President

January 12, 2009

The President
The White House
Washington, DC 20500

Dear Mr. President:

I am pleased to submit the Information Security Oversight Office's (ISOO) Report to the President for Fiscal Year 2008.

This report provides information on the status of the security classification program as required by Executive Order 12958, as amended, "Classified National Security Information." It provides statistics and analysis concerning key components of the system, primarily classification and declassification, and coverage of ISOO's on-site reviews. It also contains information with respect to industrial security in the private sector as required by Executive Order 12829, as amended, "National Industrial Security Program."

Our oversight efforts continue to identify shortcomings in agency implementation of basic requirements. Of particular concern are requirements related to implementing directives, security education and training, classification guides, and self-inspections. For example, we determined that 67 percent of all Executive branch classification guides have not been reviewed and updated as required within the last five years. Such failures are tied to requirements that have been in effect since 2003 and in many cases since 1995. At a time where we would expect to find increasing stability in the program, we are instead finding failure with the implementation of basic requirements.

The security classification system is not self-directing and works only when agency heads demonstrate personal commitment and direct senior management and resources to make it work. Increased commitment to the basic requirements throughout the Executive branch is clearly necessary to support the integrity of the classification system.

Executive Order 12958, as amended, has served the country well in terms of protecting national security information and enabling declassification at a level that an open society expects and deserves. However, further refinement is necessary, particularly to address the ways in which classified information is created and used in today's electronic environment and to address the processing of multi-agency materials subject to automatic declassification. This last issue is of particular importance given the looming associated deadline of December 31, 2009.

We remain committed to cultivating the inherent strengths of the classified national security information program. ISOO will work with the agencies that create and handle classified national security information to further improve the program in the future.

Respectfully,



William J. Bosanko
Director

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Summary of Fiscal Year 2008

Program Activity

CLASSIFICATION

- Executive branch agencies reported 4,109 original classification authorities.
- Agencies reported 203,541 original classification decisions.
- Agencies reported using the ten-year-or-less declassification instruction for 58 percent of original classification decisions.
- Executive branch agencies reported 23,217,557 derivative classification decisions.
- Agencies reported 23,421,098 combined classification decisions.
- Sixty-seven percent of the classification guides reported as being currently in use had not been updated within the past five years as required by E.O. 12958, as amended.

DECLASSIFICATION

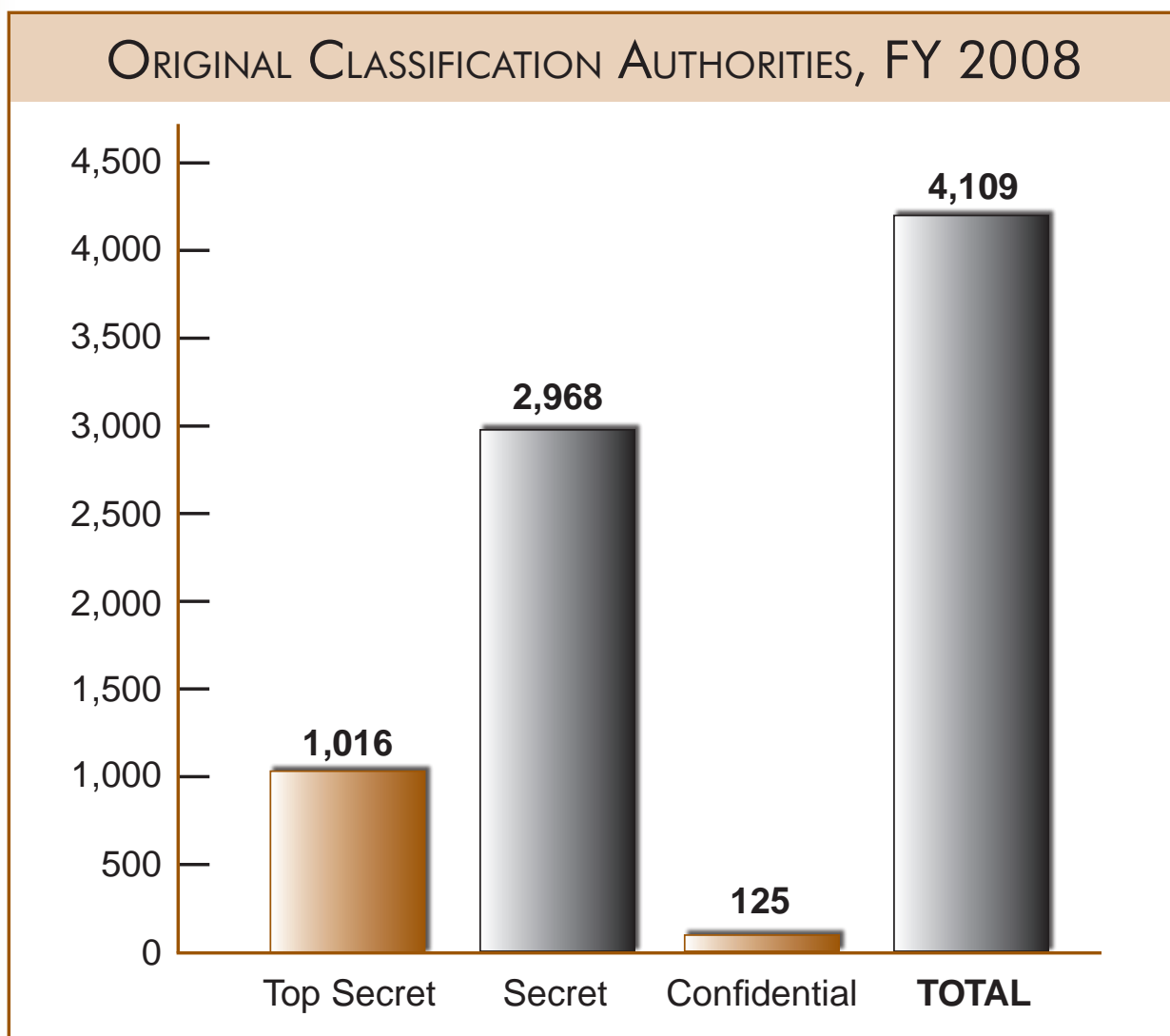
- Under automatic declassification and systematic declassification review, agencies declassified 31,443,552 pages of historically valuable records.
- There are an estimated 51 million referred pages requiring review by December 31, 2009. ISOO is not confident agencies will meet this deadline.
- Agencies received 8,264 initial mandatory declassification review requests, the highest ever reported.
- Under mandatory declassification review, agencies declassified 190,291 pages in their entirety, declassified 50,219 pages in part, and retained classification of 20,774 pages in their entirety.
- Agencies reported carrying over 5,843 initial mandatory declassification review requests into FY 2009.
- Agencies received 196 mandatory declassification review appeals and processed 178 appeals, the largest number of appeals processed in a single fiscal year since the issuance of E.O. 12958 in 1995.
- On appeal, agencies declassified 1,189 pages in their entirety, 1,501 pages in part, and retained classification of 3,782 pages in their entirety.

Classification

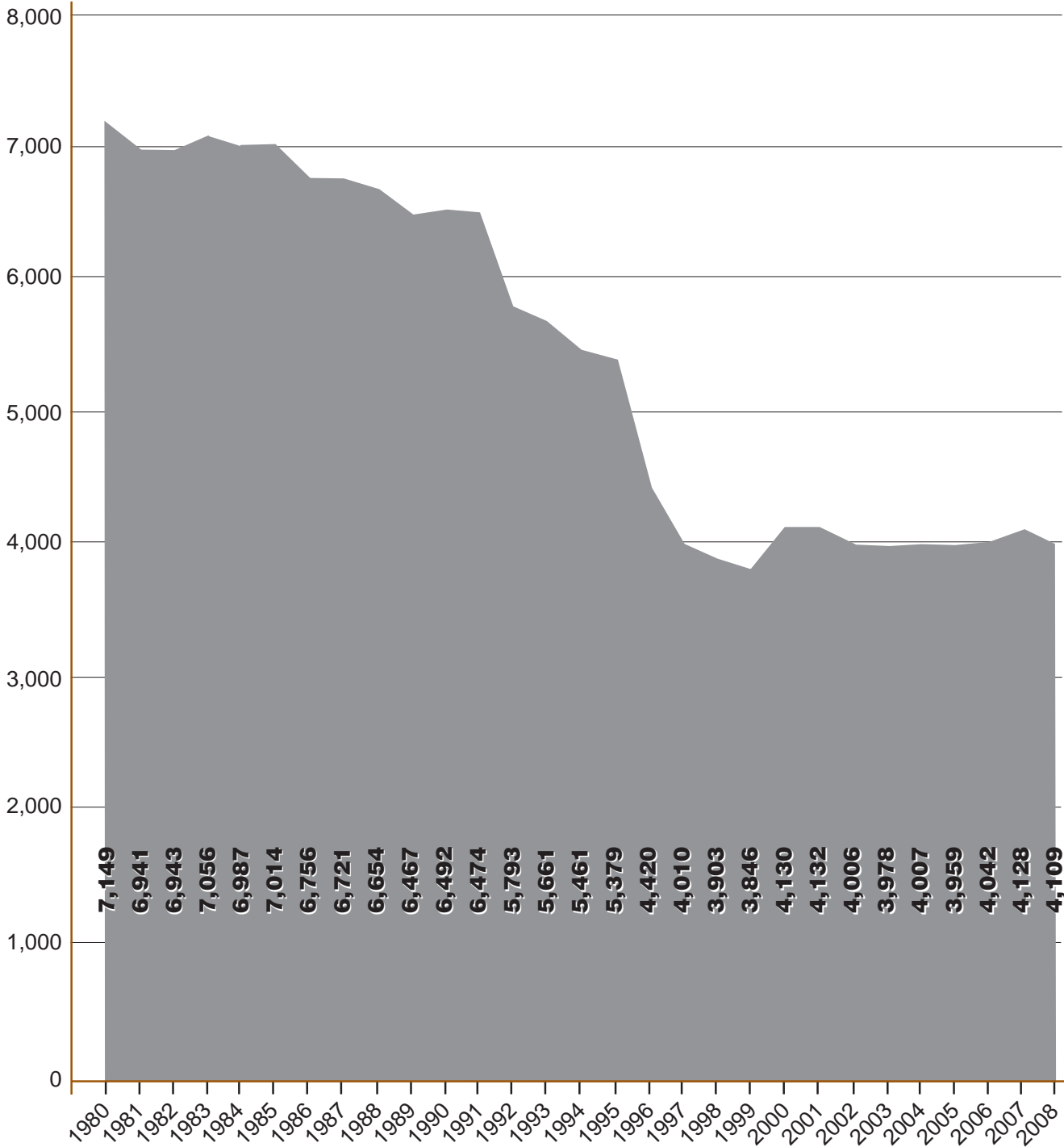
ORIGINAL CLASSIFIERS

Original classification authorities (OCAs), also called original classifiers, are those individuals designated in writing, either by the President, by selected agency heads, or by designated senior agency officials with Top Secret original classification authority, to classify information in the first instance. Under E.O. 12958, as amended, only original classifiers determine what information,

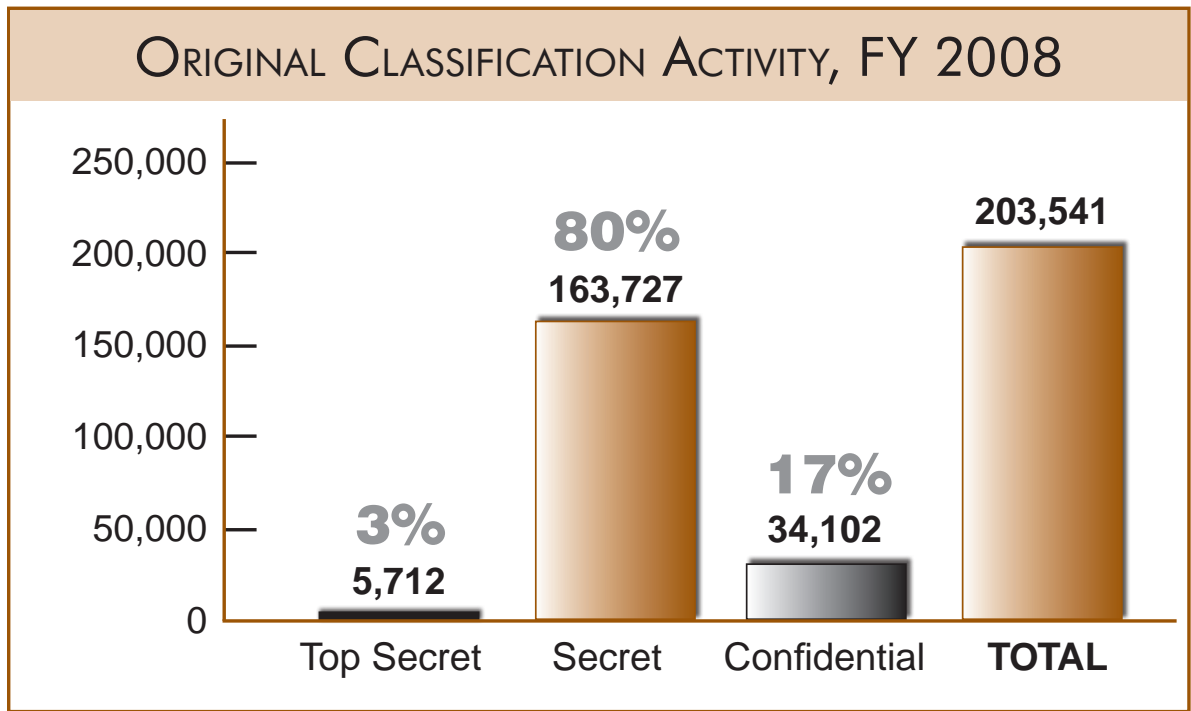
if disclosed without authorization, could reasonably be expected to cause damage to national security. Original classifiers must be able to identify or describe the damage. Agencies reported 4,109 OCAs in FY 2008, decreasing from 4,128 reported in FY 2007. This is less than the average number of OCAs for FY 1980 – FY 2007 (5,447) and significantly less than the number ISOO first reported for FY 1980 (7,149).



NUMBER OF ORIGINAL CLASSIFICATION AUTHORITIES, FY 1980 - FY 2008



ORIGINAL CLASSIFICATION ACTIVITY, FY 2008

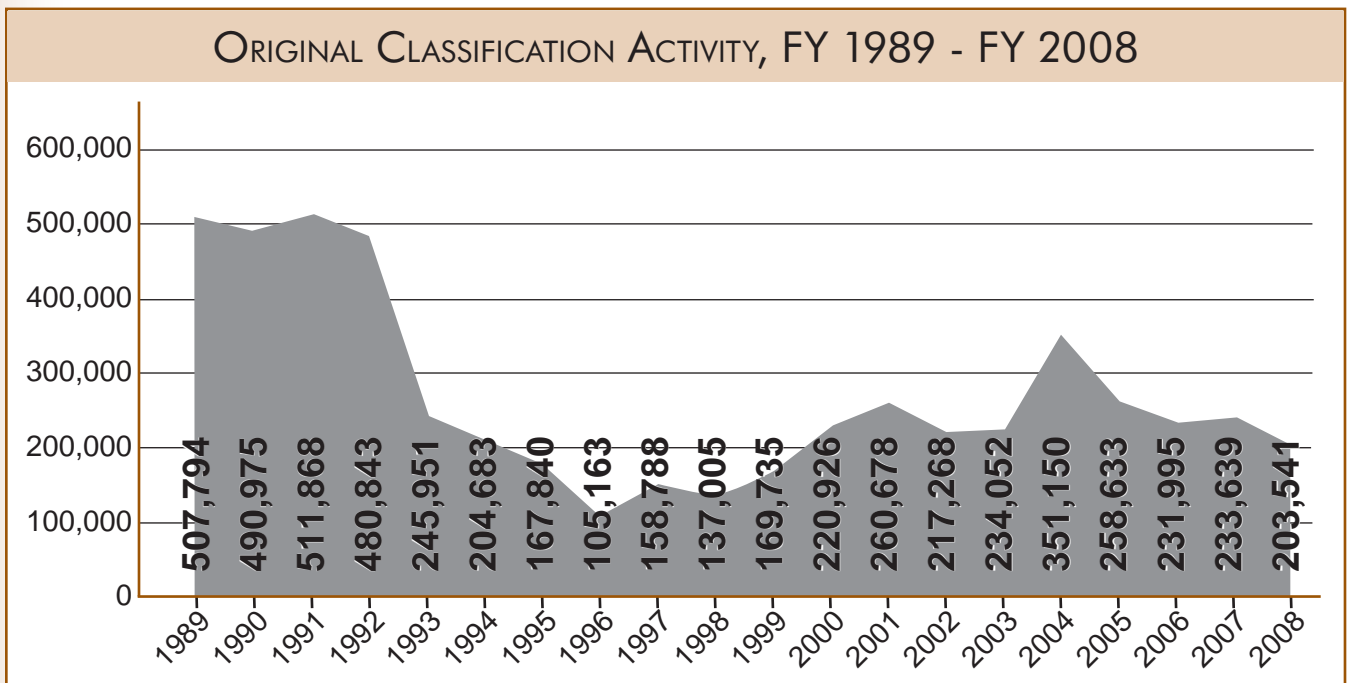


ORIGINAL CLASSIFICATION

Original classification is an initial determination by an OCA that information owned by, produced by or for, or under the control of the United States Government, requires protection because unauthorized disclosure of that information could reasonably be expected to cause damage to national security. Additionally, the process of original

classification must always include a determination by an OCA of the concise reason for the classification that falls within one or more of the authorized categories of classification, the placement of markings to identify the information as classified, and the date or event when the information becomes declassified. By definition, original classification precedes all other aspects of the security classification system, including derivative classification, safeguarding, and declassification.

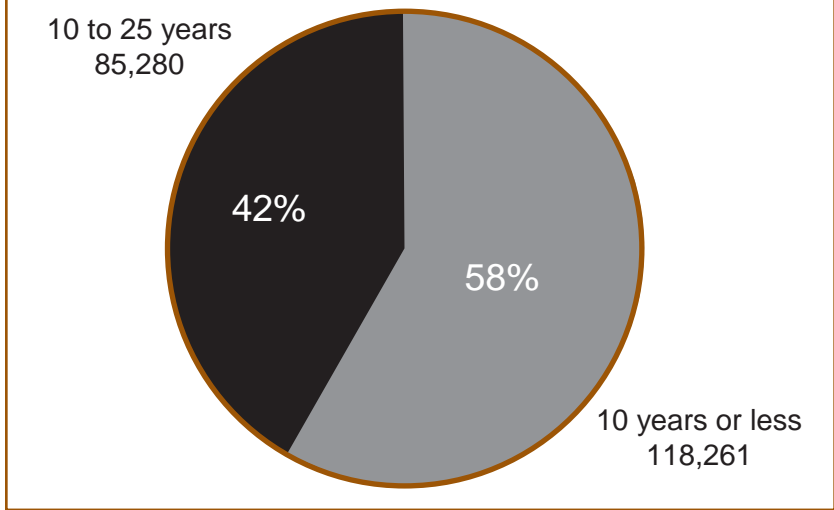
ORIGINAL CLASSIFICATION ACTIVITY, FY 1989 - FY 2008



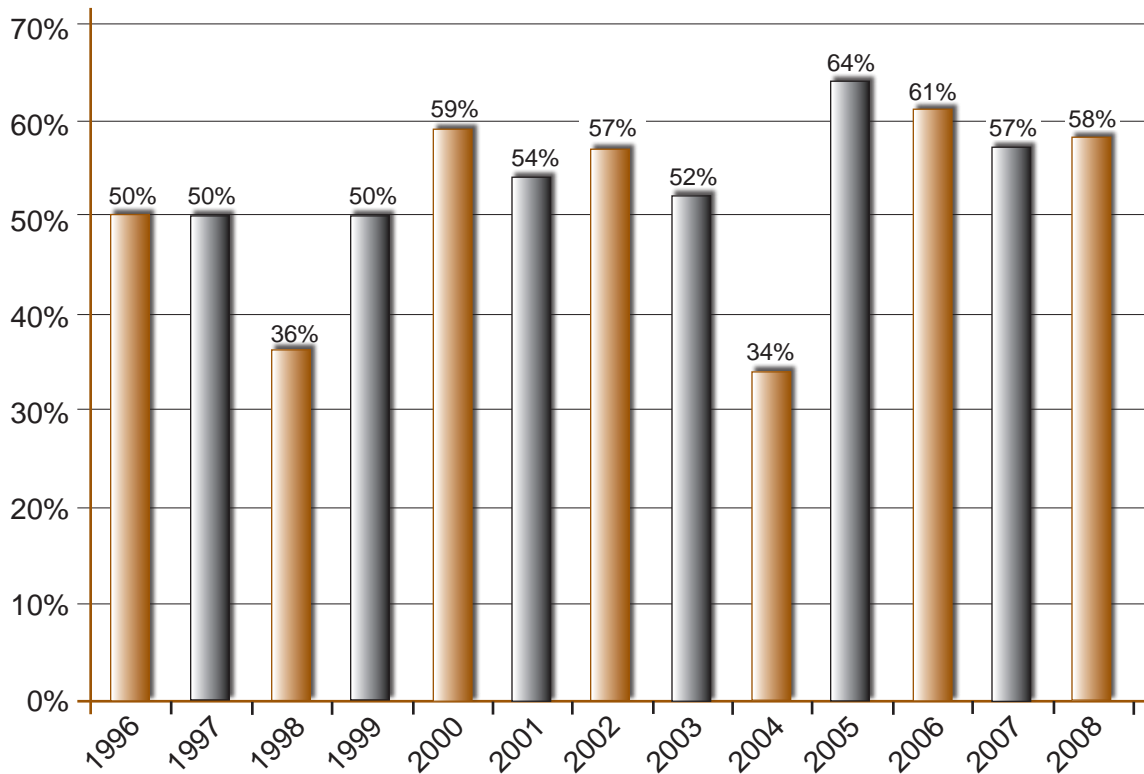
Agencies reported 203,541 original classification decisions for FY 2008, which is a 13 percent decrease from data reported in FY 2007. This is a 60 percent decrease from the 507,794 decisions reported in FY 1989. From FY 1996, when E.O. 12958 was first implemented, to FY 2007 the annual average is 214,919.

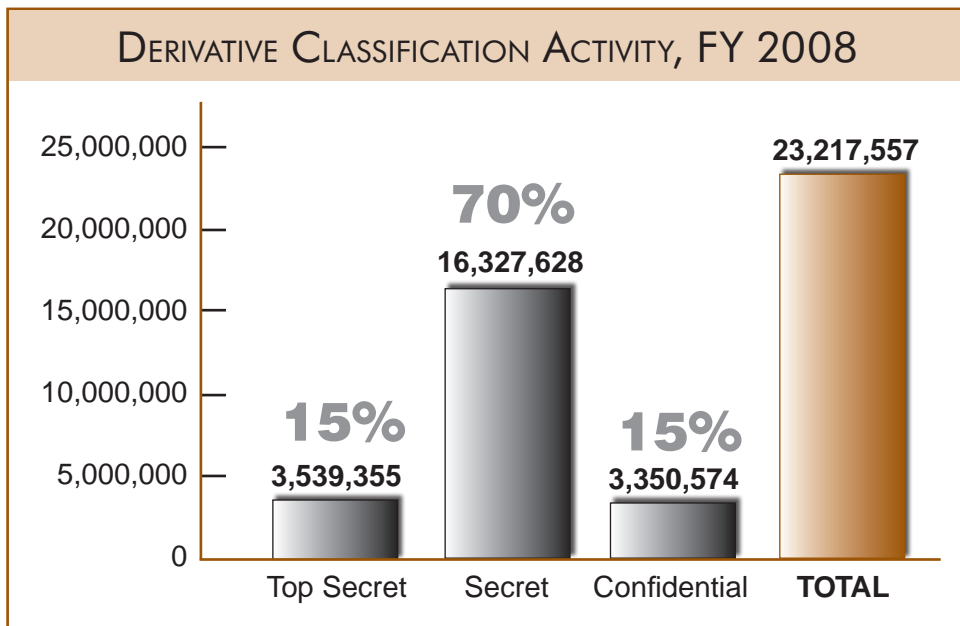
For the fourth year in a row, the majority of original classification decisions have been assigned a declassification date of ten years or less. In FY 2008, the ten-year-or-less declassification instruction was used 58 percent of the time, which is slightly higher than the 57 percent reported in FY 2007. The numbers illustrate OCAs are not automatically defaulting to the maximum duration available (25 years), which is in keeping with the spirit and intent of E.O. 12958, as amended.

DURATION OF ORIGINAL CLASSIFICATION, FY 2008



USE OF THE "TEN-YEARS-OR-LESS" DECLASSIFICATION CATEGORY





DERIVATIVE CLASSIFICATION

Derivative classification is the act of incorporating, paraphrasing, restating, or generating in new form information that is already classified. Information may be derivatively classified in two ways: (1) through the use of a source document, usually correspondence or publications generated by an OCA; or (2) through the use of a classification guide. A classification guide is a set of instructions issued by an OCA that identifies the elements of information regarding a specific subject that must be classified and establishes the level and duration of classification for each such element. Only employees of the Executive branch or Government contractors with the appropriate security clearance, who are required by their work to restate classified source information, may classify derivatively.

Derivative classifications utilize information from the original category of classification, and they may also utilize the same classified elements of information in a variety of formats and venues. Since every derivative classification action is based

on information whose classification has already been determined, it is essential that the origin of these actions be traceable to a decision by an OCA.

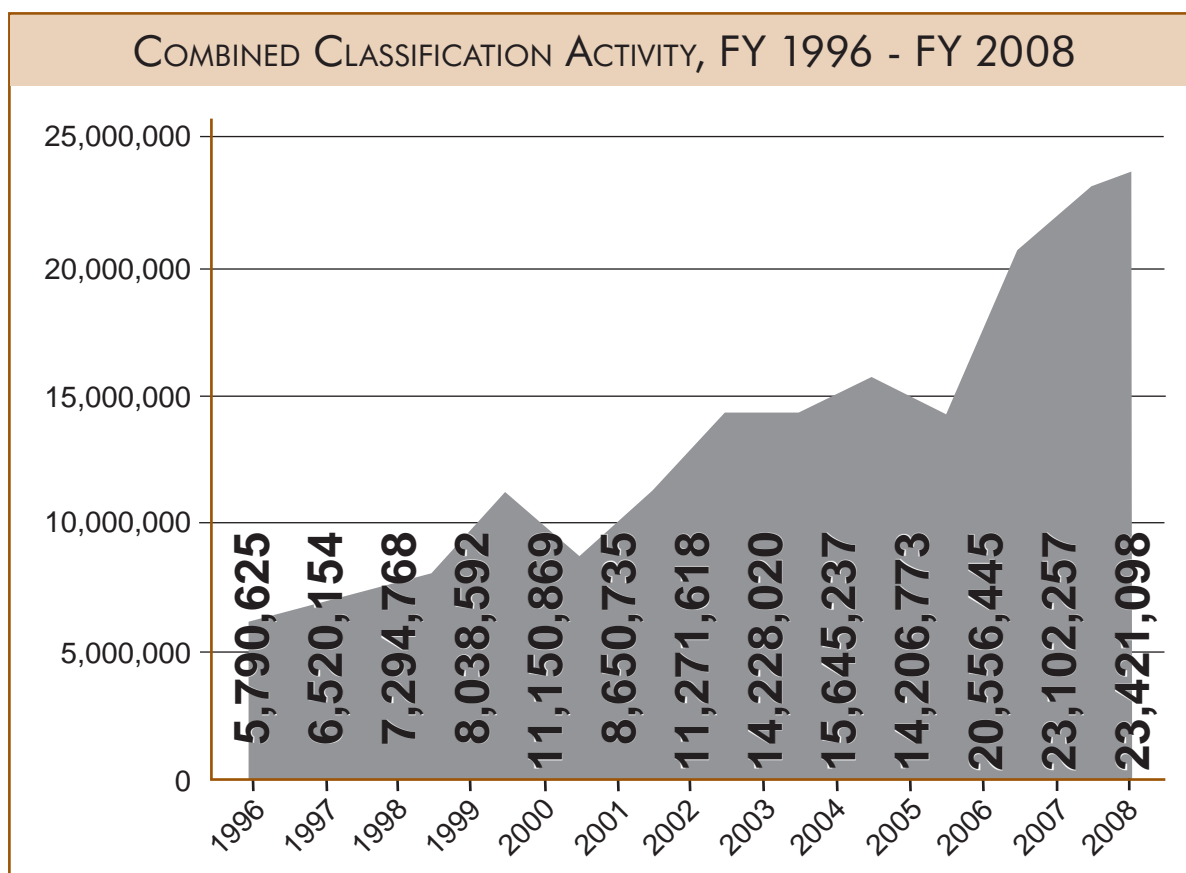
Agencies reported a total of 23,217,557 derivative classification actions in FY 2008, which is a one and a half percent increase from the 22,868,618 derivative actions reported in FY 2007. Although it is encouraging to see the level of derivative classification leveling off, this figure represents a significantly larger number than the derivative average from FY 1996 – FY 2007 (16,973,690).

The increase in derivative classification decisions is reflective of how agencies conduct business in the current electronic environment, and should not necessarily be interpreted as the creation of more secrets. Methods of communicating electronically have expanded significantly, to include classified web pages, blogs, wikis, bulletin boards, instant messaging, etc. Additionally, information sharing and its attendant policies have been a factor as well. Classified products are now disseminated to more consumers, and agencies are leveraging all forms of online tools to publish, inform, and collaborate.

COMBINED CLASSIFICATION

Together, original and derivative classification decisions make up combined classification activity. In FY 2008, the reported combined classification activity is 23,421,098 which is a one percent increase over the 23,102,257 decisions

reported for FY 2007. The average combined classification activity from FY 1996 (the first fiscal year following the issuance of E.O. 12958) to FY 2007 is 12.2 million decisions per year. From FY 1980 through FY 1996, the annual average for combined classification was 11.5 million decisions per year.



SELF-INSPECTIONS

In order to maintain the integrity of the classification system, it is vital that agencies conduct internal oversight in order to promote sound information security practices. While E.O. 12958, as amended, authorizes ISOO to conduct on-site inspections of those agencies that generate and handle classified information, it places primary responsibility for internal oversight on the agency heads and senior agency officials. E.O. 12958, as amended, requires agency heads to establish and maintain “an ongoing self-inspection program, which shall include the periodic review and assessment of the agency’s classified product.” Agencies reported 8,604 self-inspections in FY 2007 and 7,289 self-inspections in FY 2008. A strong self-inspection program is indicative of a robust classification security program. Agencies must adopt responsible security practices by adopting the internal oversight mechanisms required by E.O. 12958, as amended.

CLASSIFICATION CHALLENGES

Another internal mechanism to promote sound classification decisions is the classification challenge provision established by section 1.8 of E.O. 12958, as amended. Authorized holders of information who, in good faith, believe its classification status is improper are encouraged and expected to challenge the classification status of that information. Classification challenges are handled both informally and formally, and provide individual holders the responsibility to question the appropriateness of the classification of information in accordance to E.O. 12958, as amended. However, ISOO’s program reviews have revealed that most authorized holders of classified information are not aware of this provision and, therefore, do not challenge classification as much as should be expected in a robust system. Agencies reported 275 formal classification challenges in FY 2007 and 436 formal classification challenges in FY 2008.

Declassification

BACKGROUND

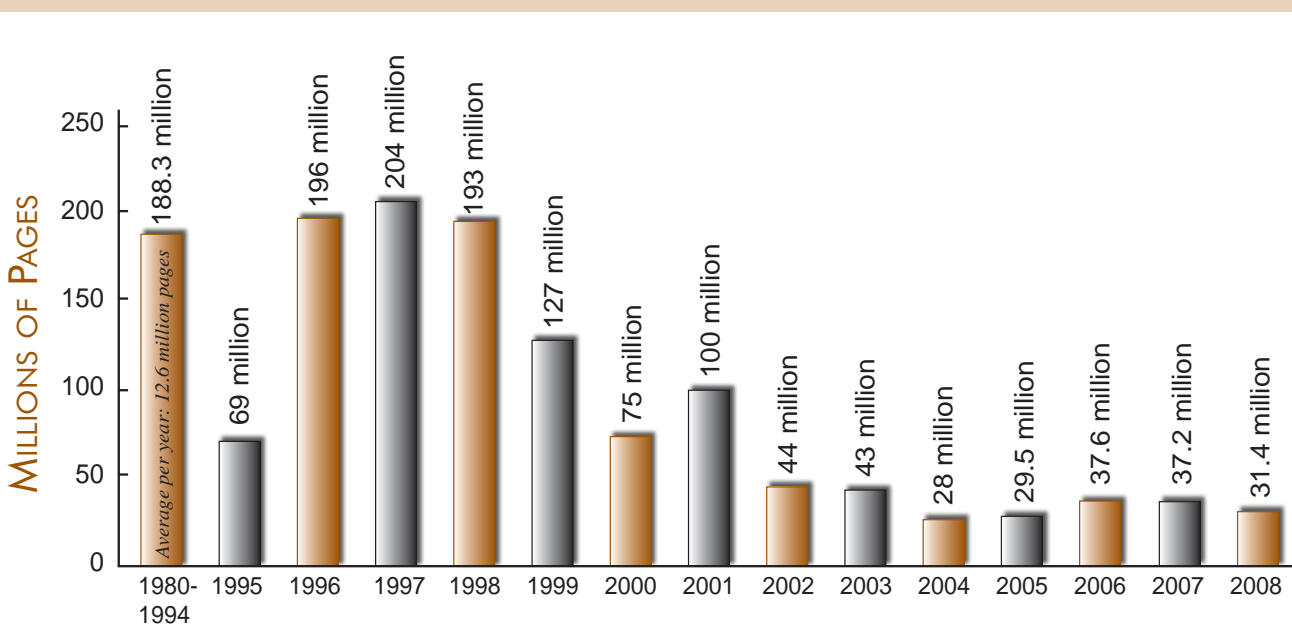
Declassification is an integral part of the security classification system. It is the authorized change in status of information from classified to unclassified. Executive Order 12958, as amended, establishes three declassification programs: automatic declassification, systematic declassification review, and mandatory declassification review. Agencies must commit necessary resources in order to effectively implement these programs. Automatic declassification removes the classification of information at the close of every calendar year when that information reaches the 25-year threshold. Systematic declassification review is required for classified records less than 25 years old and those exempted from automatic declassification. For purposes of this report, statistics reported for systematic declassification review and automatic declassification are combined because the

execution of both programs is usually indistinguishable. Mandatory declassification review provides for direct, specific review for declassification of information when requested. Together these three programs are essential to the viability of the classification system and vital to an open government.

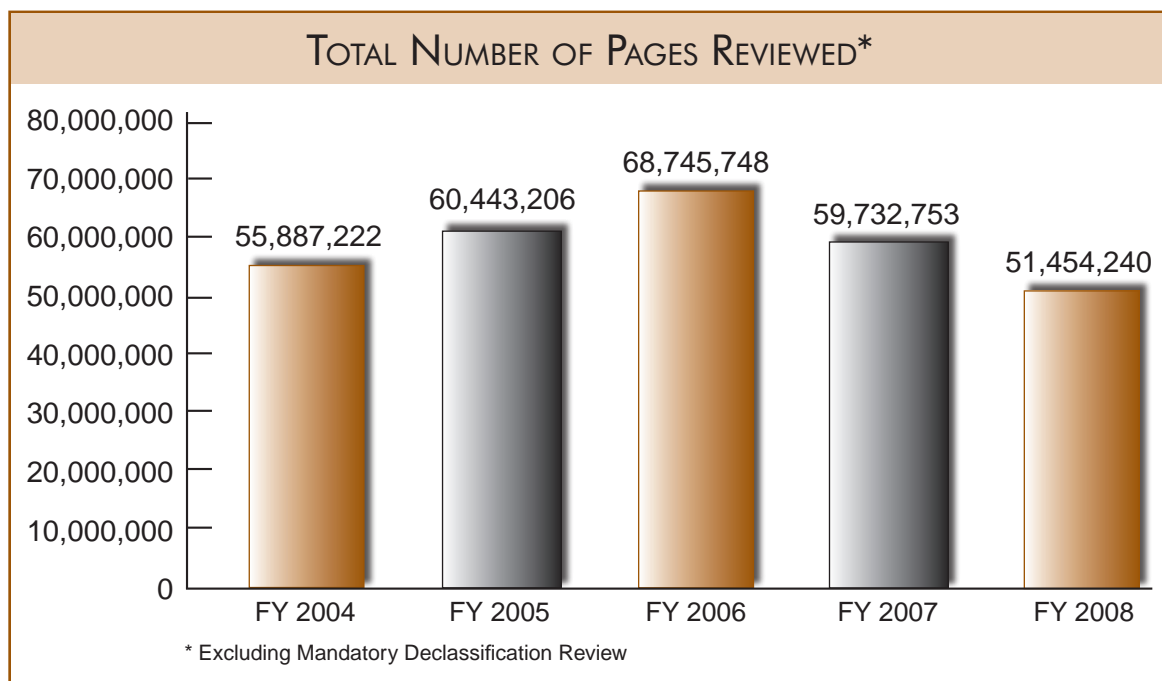
PAGES REVIEWED AND PAGES DECLASSIFIED

During FY 2008, the Executive branch reviewed 51,454,240 pages for declassification under sections 3.3 and 3.4 of E.O. 12958, as amended. Moreover, the Executive branch declassified 31,443,552 pages under the automatic and systematic declassification review provisions.

1.4 BILLION PAGES DECLASSIFIED, FY 1980 - FY 2008*



* Excluding Mandatory Declassification Review



As detailed below, the overall number of pages reviewed and pages declassified by Executive branch agencies has declined significantly from previous years. Agencies have reviewed 14 percent fewer pages and have declassified 16 percent fewer pages than in FY 2007. This decline in declassification activity across the Executive branch can be attributed to the passing of the December 31, 2006, deadline for automatic declassification for all material 25 years of age or older. Significant effort and resources were allocated in the first quarter of FY 2007 to reviewing records in anticipation of this deadline. However, in FY 2008, the focus of most agency declassification activity was narrow and limited to records created in the early 1980s.

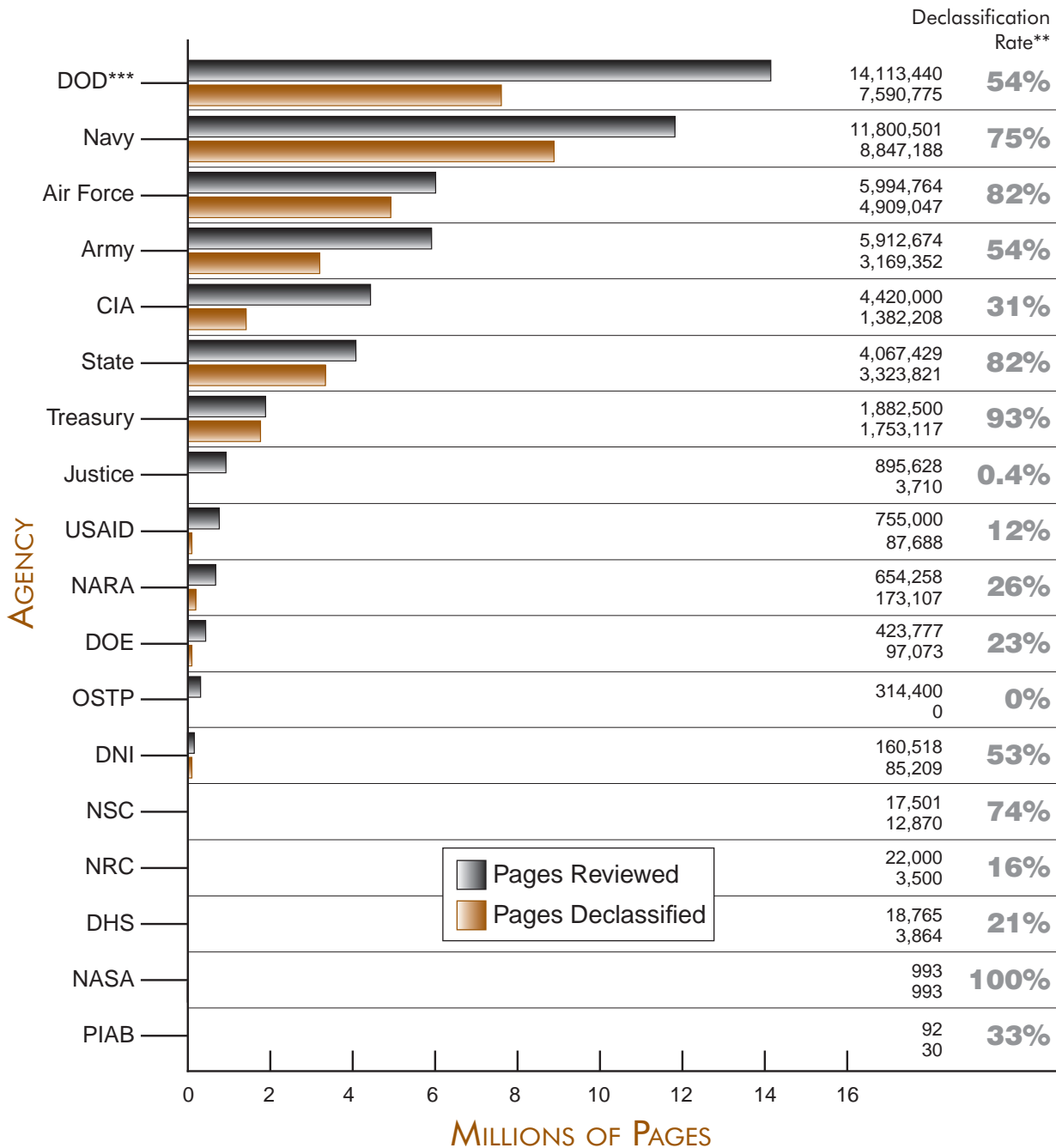
Although the overall volume of records reviewed and declassified has significantly decreased, the total declassification rate of all records reviewed by the Executive branch only declined by 1 percent from FY 2007 to FY 2008. In FY 2008, agencies declassified 61 percent of pages reviewed. Although the volume of records reviewed and declassified after the December 31, 2006, deadline has decreased, agencies of the Executive branch continue to declassify records at a steady rate.

The Department of Defense (DOD), the Department of the Navy (Navy), the Department of the Army (Army), and the Department of the Air Force (Air Force), reviewed 37,821,379 pages, or 74 percent of the total number of pages reviewed by all agencies. Of the 31.4 million pages declassified by agencies, DOD and the three military departments declassified 24,516,362 pages which accounts for 78 percent of the total pages declassified.

Navy declassified 8,847,188 pages, leading all Executive branch agencies in the number of pages declassified during FY 2008. This represents a declassification rate of 75 percent. Of those agencies with large declassification programs, Air Force had the highest declassification rate at 82 percent (declassifying 4,909,047 pages).

Agencies will need to continue to devote resources to all three declassification programs as stipulated in E.O. 12958, as amended. In accordance with the systematic declassification review requirements, agencies now need to devote substantially more resources to review those records that were exempted from automatic declassification since 1995.

NUMBER OF PAGES REVIEWED AND DECLASSIFIED BY AGENCY, FY 2008*



TOTAL: 51,454,240 pages reviewed
31,443,552 pages declassified **61%** declassification rate

* Excluding Mandatory Declassification Review

**It is important to point out that at several agencies the bulk of the records requiring review contain information originated by other agencies. Therefore, the bulk of the records must be referred to those agencies for declassification determinations.

***Less Army, Navy, and Air Force

ISOO DECLASSIFICATION ASSESSMENTS

In FY 2008, ISOO began an initiative to evaluate the results of agencies' automatic declassification and systematic declassification review programs. This initiative includes developing a plan to conduct assessments of agencies identified as having substantial declassification programs; developing, testing, and refining a scoring methodology to evaluate agency declassification decisions; and establishing a means to disseminate the results of the assessments back to both the agencies for the purpose of strengthening their programs and to the declassification community as a whole to correct common errors and identify best practices.

In March 2008, ISOO requested information from agencies about declassification reviews conducted between October 2007 and March 2008. This data call was limited to 24 agencies identified as having substantial declassification programs based on their Standard Form 311 submission for FY 2007. From June to August 2008, ISOO analysts conducted the declassification assessments and evaluated the program results for 22 of these agencies, mostly located in the Washington, D.C. area.

ISOO developed an assessment plan that employs statistical sampling to evaluate the results of agency declassification decisions. Based on initial testing, trials, and revisions, ISOO's assessments focused on three areas of concern: missed equities, improper exemptions, and inappropriate referrals. Within the sample, ISOO analysts looked for missed equities in the records, such as a mention of the security classification interest of one agency in the records of another agency that had not been identified by the initial reviewer for referral to that agency. ISOO analysts looked for improper exemptions, such as an agency attempting to exempt a document from automatic declassification under an exemption category not permitted by that agency's declassification guide approved by the Interagency Security Classification Appeals Panel (ISCAP). ISOO also examined the records for inappropriate referrals, such as those to agencies without authority to exempt information from declassification. Within the sample, each occurrence constituted a finding that was noted and affected the agency's score. In addition to these three categories of findings from within the statistical sample, ISOO analysts examined records from outside the sample to collect observations on other aspects of the declassification programs.

The results of these assessments were recorded and scores were assigned to the agencies. Using the scoring tool, ISOO allocated up to 60 points for the objective findings within the statistical sample and up to 40 points for the programmatic observations, for a possible total of 100 points. Measuring and scoring agencies consistently presents challenges influenced by the various types of records reviewed in different agencies, the volume of records, the equities contained in the records, the sensitivities, and the different agencies declassification review methods. Of the 22 agencies ISOO assessed, 8 received "high" scores of 90 or above, 12 received "medium" scores of 60 to 89, and 2 received "low" scores of 59 and below.

Within the statistical sample, ISOO encountered relatively few examples of improper exemptions, with only 1 of the 22 agencies committing this error. ISOO analysts encountered missed equities in 5 of 22 agency samples and inappropriate referrals in 5 of 22 agency samples. For the programmatic observations, ISOO found 15 of the 22 agencies had reviewed records during the reporting period that were significantly older than 25 years, raising questions about the appropriateness of these reviews and whether these agencies fully understood the automatic declassification provisions of E.O. 12958, as amended.

ISOO chose to focus its oversight efforts on providing specific guidance to agencies through ISOO Notices. The first five ISOO Notices addressed several areas of concern identified by the ISOO assessments: the use of the Standard Form 715, the coordination of agency reviews of records older than 25 years, best practices for recordkeeping, and the referral of records to agencies ineligible to exempt information beyond 25 years. As ISOO continues to evaluate these programs, further ISOO Notices with specific guidance on declassification issues will be issued. ISOO Notices may be found on the ISOO website (www.archives.gov/isoo/notices).

PROCESSING REFERRALS

The declassification review process is complicated by the fact that records containing other agencies' information must be referred to those agencies. Section 3.3(e)(3) of E.O. 12958, as amended, allows for a three-year delay in the processing of referrals. It states, "before the records are subject to automatic declassification, an agency head or senior agency official designated under section 5.4 of this order may delay automatic

declassification for up to 3 years for classified records that have been referred or transferred to that agency by another agency less than 3 years before automatic declassification would otherwise be required.” Thus E.O. 12958, as amended, provides agencies with limited relief and an opportunity to delay the onset of automatic declassification of 25 year old (or older) permanently valuable records containing classified national security information of multiple agencies.

For records referred by the initial E.O. 12958, as amended, deadline of December 31, 2006, the delay in processing these referrals and either exempting or declassifying them ends on December 31, 2009. In order to qualify for the three-year delay, agencies were required to have referred those records containing classified national security information of other agencies by December 31, 2006. Agencies receiving referred records have extra time to conduct a declassification review and provide decisions to the original referring agency. Based on data ISOO received in previous fiscal years, agencies by and large have referred records to other agencies as required by E.O. 12958, as amended.

Although agencies have developed some tools to manage the referral process, ISOO is not confident agencies will be able to meet the initial December 31, 2009, deadline.

The volume of referrals requiring action by December 31, 2009, is approximately 51 million pages, and the majority of these are at the National Archives facility in College Park, MD. Coordination of referrals at NARA has proven difficult for agencies to accomplish. A single box of records, containing approximately 2,500 pages, could contain referrals to ten or more agencies. It has proven time-consuming, resource intensive, and detrimental to the preservation of these records to have each agency review their equity separately from other agencies.

In 2004, NARA created the Interagency Referral Center (IRC) to help address these problems and coordinate review. The IRC has had some success, but there is a continued need for centralized

management to oversee the referral process. Despite the success of this program in reviewing approximately 200,000 documents (approximately 5.6 million pages) since its inception, this program does not have the capacity to process tens of millions of pages of referrals required by the December 31, 2009, deadline. The IRC has not operated as efficiently as first envisioned, partly because agency participation is voluntary and not all agencies participate consistently. As a result, it can often take considerable time for records to be reviewed by all referred agencies. Moreover, NARA does not have sufficient resources to effectively and efficiently facilitate agencies’ review of referred pages by the December 31, 2009, deadline.

Section 3.3(h) of E.O. 12958, as amended, requires “[r]ecords containing information that originated with other agencies or the disclosure of which would affect the interests or activities of other agencies shall be referred for review to those agencies...” Agencies

have taken this requirement seriously, but many referrals are in fact unnecessary. Agencies have been perfunctorily following this requirement without regard to the actual need to refer information to other agencies. ISOO assessments of agency declassification programs found agency reviewers

were referring information to agencies that were not Executive branch agencies or that had no authority to exempt information from declassification. Also, within the “mountain” of referrals created by agencies, there remains classified national security information that has not been identified for referral. Agency reviewers have created this “missed equities” problem because they have referred based on “letterhead,” rather than evaluating the full content of the record. ISOO is particularly concerned that “missed equities” will continue unless agencies change their review process. The failure to address missed equities may put classified national security information at risk.

It is clear agencies will be unable to review all referrals by the December 31, 2009, deadline. ISOO is concerned that still sensitive classified national security information will be automatically declassified. ISOO is committed to working with agencies and the President to address this situation early in FY 2009.

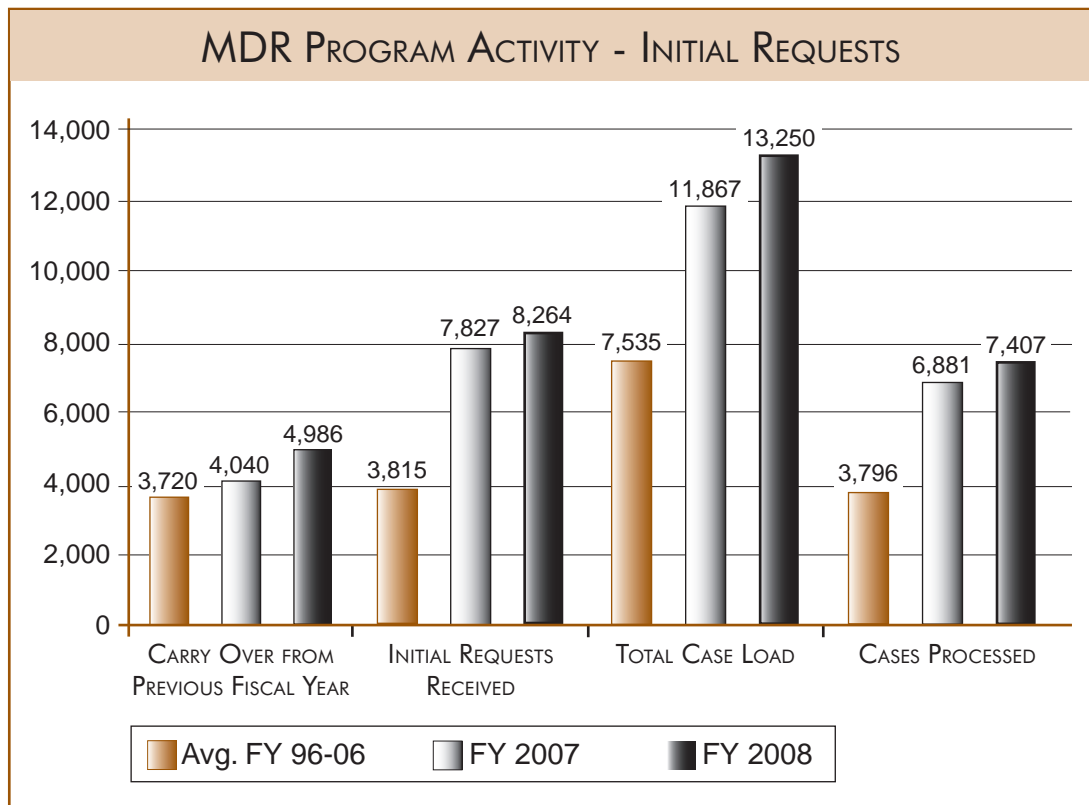
IT IS CLEAR AGENCIES WILL BE UNABLE TO REVIEW ALL REFERRALS BY THE DECEMBER 31, 2009, DEADLINE. . . . ISOO IS COMMITTED TO WORKING WITH AGENCIES AND THE PRESIDENT TO ADDRESS THIS SITUATION EARLY IN FY 2009.

MANDATORY DECLASSIFICATION REVIEW

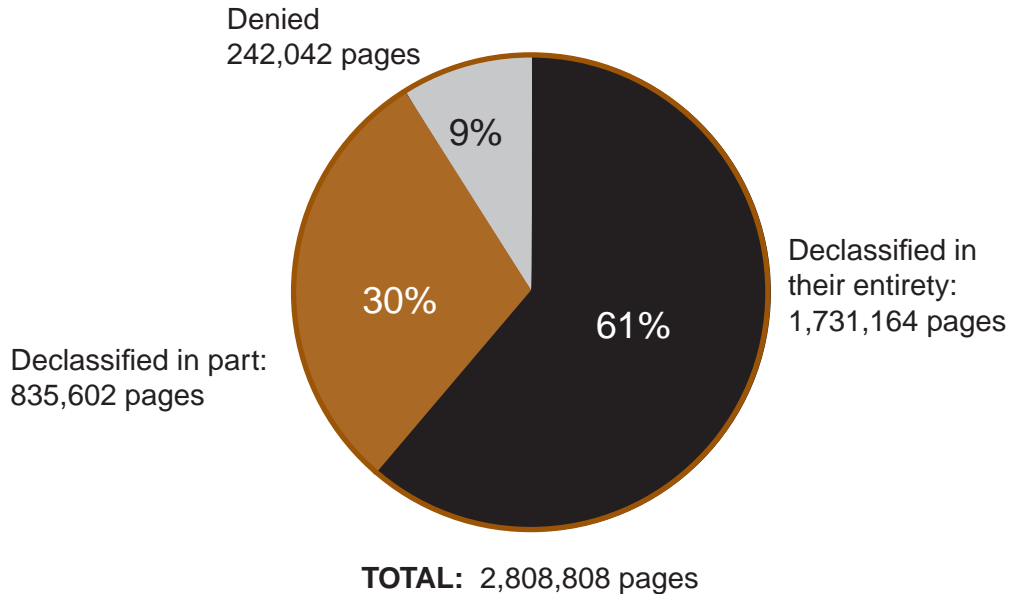
Under E.O. 12958, as amended, the mandatory declassification review (MDR) process requires a review of specific classified national security information in response to a request seeking its declassification. Requests must be in writing and describe the record containing the information with sufficient specificity to permit the agency receiving the request to locate it with a reasonable amount of effort. MDR remains popular with some researchers as a less litigious alternative to requests under the Freedom of Information Act, as amended (FOIA). It is also used to seek the declassification of Presidential papers or records not subject to the FOIA.

INITIAL REQUESTS

The past two fiscal years have seen a dramatic increase in the number of MDR requests. From FY 1996 through FY 2006, agencies received an average of 3,815 initial requests per fiscal year and processed an average of 3,796 initial requests per fiscal year. Agencies received 8,264 initial requests for MDR in FY 2008, the highest ever reported. This represents an increase of 5.6 percent (437 requests) over FY 2007 and an increase of 46 percent over the FY 1996 – FY 2006 yearly average. DOD, including the three military departments, received a total of 5,076 new requests, 61 percent of the Executive branch total. NARA received the second highest number



DISPOSITION OF INITIAL MDR REQUESTS, FY 1996 - FY 2008



of requests, at 1,301 (16 percent), and the Central Intelligence Agency (CIA) received 1,096 new requests (13 percent). When combined, these three agencies were responsible for receiving 90 percent of all initial MDR requests for FY 2008. Agencies processed 7,407 initial requests this fiscal year, an increase of 8 percent (526 requests) from the previous fiscal year and an increase of 51 percent over the FY 1996 – FY 2006 yearly average. DOD (4,206), NARA (1,063), and CIA (808) were responsible for processing 82 percent of all initial MDR requests.

In FY 2008, agencies processed 261,283 pages. Of these, 190,291 pages were declassified in their entirety (73 percent), 50,219 pages were declassified in part (19 percent), and 20,774 pages remained classified in their entirety (8 percent). While the total number of pages processed decreased substantially by 200,213 pages from FY 2007, the percentages of pages declassified in their entirety, declassified in part, and denied in full remained statistically close to the previous fiscal year. Moreover, the high percentage of pages declassified in their entirety continues to improve over the long-term (FY 1996 – FY 2008).

Mandatory declassification review has proven to be a successful program. Between FY 1996 and FY 2008, agencies received approximately 58,000 initial requests and processed 2,808,808 pages.

Over this time, only 242,042 pages (9 percent) remained classified in their entirety after an initial MDR review: 1,731,164 pages were declassified in their entirety (61 percent), and 835,602 pages were declassified in part (30 percent).

However, agencies have been unable to keep pace with the influx of initial requests. Between FY 1996 and FY 2006, agencies carried over an average of 3,720 initial MDR requests from one fiscal year into the next. In FY 2007, agencies reported to ISOO that they carried over 4,986 initial requests into FY 2008. This figure increased again in FY 2008 as agencies reported to ISOO that they were carrying over 5,843 initial requests into FY 2009, an increase of over 2,000 requests from the FY 1996 – FY 2006 average. In FY 2008, three agencies—NARA (2,586 requests), DOD (1,911 requests), and CIA (1,063 requests)—accounted for majority of requests carried forward into FY 2009, as well as 95 percent of the backlog of initial requests.

The Department of Energy (DOE) and the Department of Homeland Security (DHS) have made notable progress in decreasing the size of their MDR backlogs. DOE carried over 161 requests into FY 2008, but only 112 requests into FY 2009. DHS carried over 114 requests into FY 2008 (a 55 percent decrease from FY 2007), and only 51 requests into FY 2009.

APPEALS

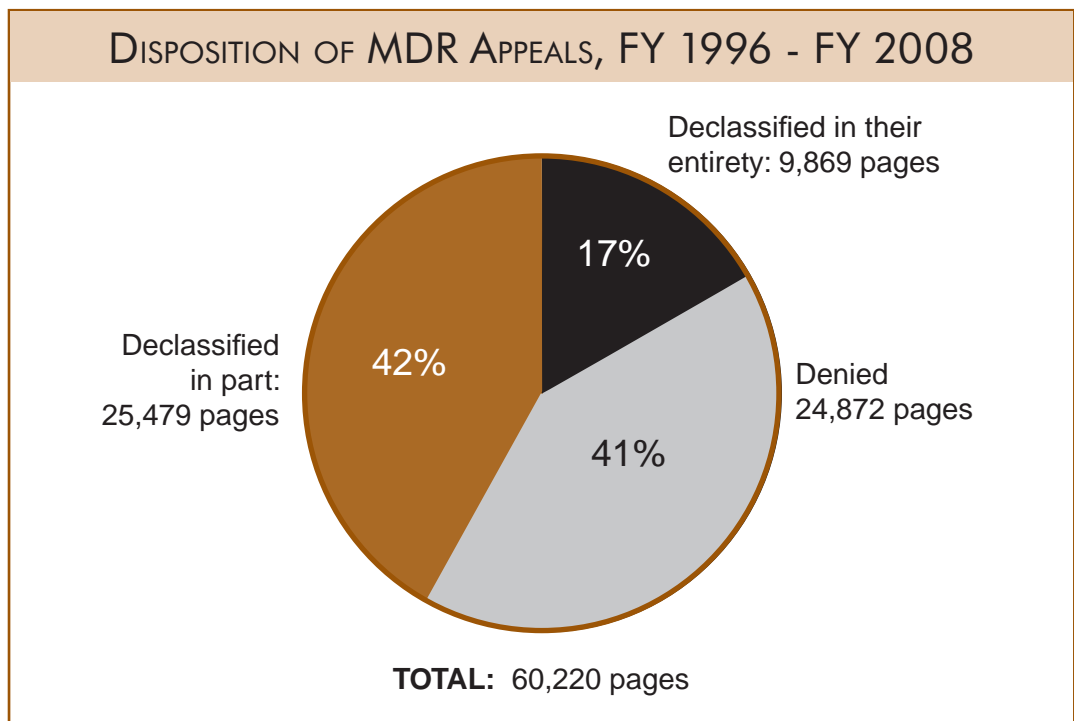
During FY 2008, agencies received 196 appeals of agency decisions to deny information after processing and deciding upon initial MDR requests. Three agencies accounted for 91 percent of these appeals: CIA (90 appeals), DOD (69 appeals), and NARA (20 appeals). Only three other agencies reported receiving new appeals: the Department of State (15 appeals), the National Aeronautics and Space Administration (NASA) (1 appeal), and DOE (1 appeal).

Agencies processed 178 appeals in FY 2008, the largest number of appeals processed in a single fiscal year since the issuance of E.O. 12958 in 1995. Agencies processed 67 appeals in FY 2006 and 104 appeals in FY 2007. Three agencies accounted for 96 percent of the total appeals processed in FY 2008: DOD (82 appeals), NARA (55 appeals), and CIA (33 appeals). Although agencies continue to report progress in adjudicating and processing appeals, ISOO remains concerned about a large backlog carried over from fiscal year to fiscal year. In FY 2006, agencies reported carrying over 123 appeals; in FY 2007, agencies reported carrying over 105 appeals; and in FY 2008, agencies reported carrying over 183 appeals into FY 2009.

In past annual reports, ISOO reported NARA's increasing backlog and low processing productivity.

NARA had only processed 6 appeals in FY 2006 and 11 appeals in FY 2007. As a result, NARA undertook a special effort during FY 2008 and adjudicated and processed 55 MDR appeals. However, NARA's backlog increased from 42 to 47 in FY 2008. The CIA reported the largest backlog of appeals carried over into FY 2009. The CIA's backlog of appeals has grown from 33 appeals in FY 2007 to 90 for FY 2008, 49 percent of the Executive branch total.

In the 178 appeals processed in FY 2008, agencies reviewed 6,472 pages, representing a 20 percent decrease from the 8,122 pages reviewed in FY 2007. However, this represents 1,993 pages more than the average of 4,479 pages reviewed FY 1996 – FY 2007. The processing of MDR appeals by agencies in FY 2008 resulted in the declassification of information in 2,690 pages, or 41 percent of the pages reviewed. Of these pages, 1,189 were declassified in their entirety (18 percent) and 1,501 were declassified in part (23 percent). Agencies affirmed the classification of 3,782 pages (59 percent) in their entirety. Since FY 1996, agencies processed 60,220 pages as part of MDR appeals. Of these, 9,869 pages were declassified in their entirety (17 percent), 25,479 pages were declassified in part (42 percent), and 24,872 pages remained classified in their entirety (41 percent).



MDR PROGRAM REQUIREMENTS

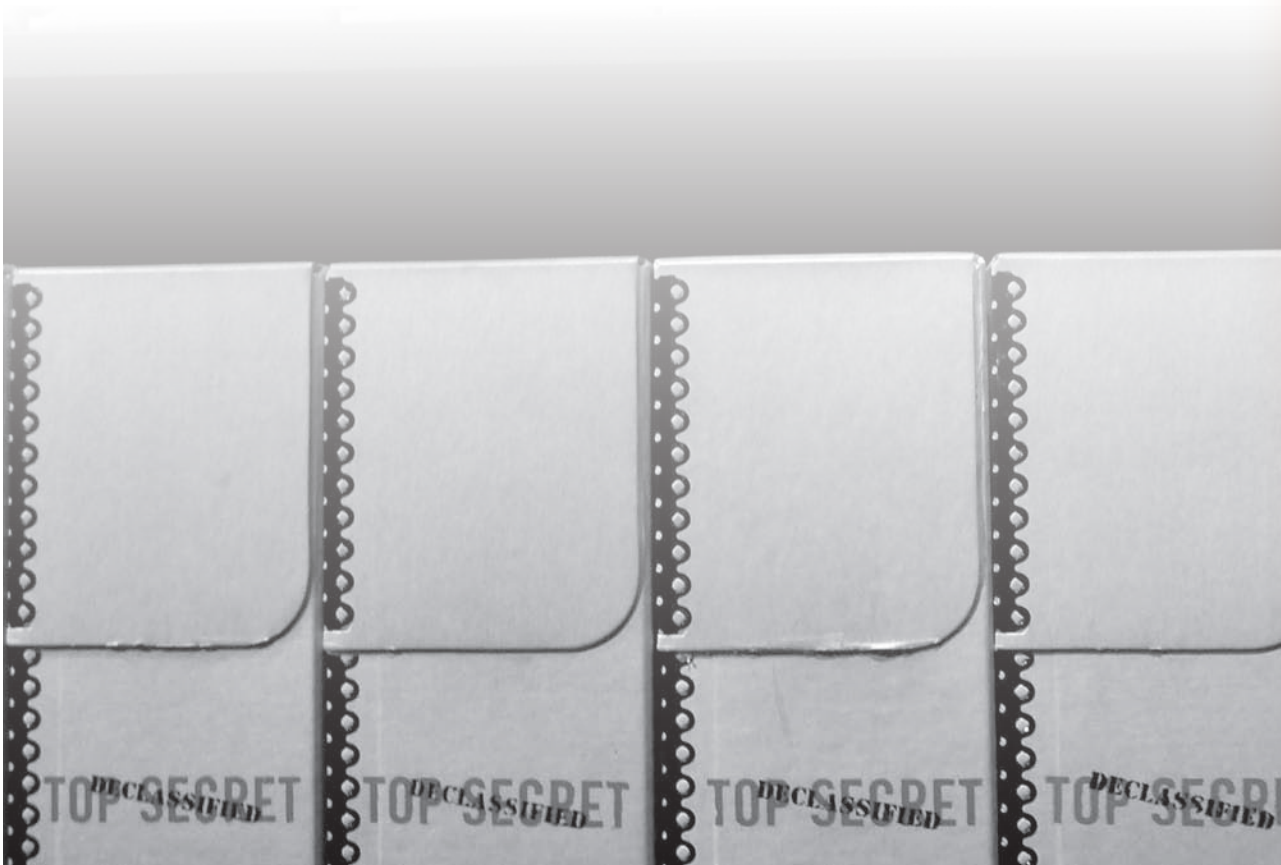
Compliance with the MDR provisions of E.O. 12958, as amended, and 32 C.F.R. Part 2001 is not optional. Agencies are expected to staff and provide sufficient resources to process MDR requests and conduct a review of the information for its possible declassification. Agencies are expected to adjudicate and process appeals in a timely manner consistent with the requirements of E.O. 12958, as amended, and 32 C.F.R. Part 2001.

An ISOO special review of Executive branch agencies' MDR programs outlined in ISOO's FY 2005 Annual Report, revealed the need for a better understanding of MDR requirements and procedures. As a result, ISOO hosted an MDR workshop for the public and for Government representatives in FY 2006. This workshop focused on both the rights of requestors and the responsibilities of Executive branch agencies. ISOO continued this type of training in FY 2007 and FY 2008 and will continue these MDR training sessions in FY 2009. Additionally, in FY 2008, ISOO conducted agency-specific MDR training

sessions at agencies in an effort to ensure those agencies understood the requirements of E.O. 12958, as amended, and 32 C.F.R. Part 2001.

Agencies must evaluate their own MDR programs and be prepared to devote sufficient resources to address increases in initial requests and appeals. Agencies must take action to eliminate their MDR backlogs and need to proactively manage their MDR programs. Since the issuance on December 14, 2005, of E.O. 13392, "Improving Agency Disclosure of Information," agency representatives have informally pointed to the requirements of E.O. 13392 and its focus on the requirements of the FOIA when speaking to their compliance with the MDR requirements. Agencies must comply with all of the requirements of both FOIA and MDR by committing the necessary resources to ensure the effective implementation of both programs.

Additional information on MDR can be found in sections 3.5 and 3.6 of E.O. 12958, as amended, 32 C.F.R. Part 2001.33, and Article VIII of Appendix A to 32 C.F.R. Part 2001. Please also consult the ISOO website (www.archives.gov/isoo) for more information.



Interagency Security Classification Appeals Panel

AUTHORITY

Section 5.3 of Executive Order 12958, as amended, "Classified National Security Information."

FUNCTIONS

1. To decide on appeals by authorized persons who have filed classification challenges under section 1.8 of E.O. 12958, as amended.
2. To approve, deny, or amend agency exemptions from automatic declassification as provided in section 3.3 of E.O. 12958, as amended.
3. To decide on appeals by persons or entities who have filed requests for mandatory declassification review (MDR) under section 3.5 of E.O. 12958, as amended.

MEMBERS*

William H. Leary, Chair
National Security Council

Matthew G. Olsen
Department of Justice

Joseph W. Lambert
Central Intelligence Agency

Margaret P. Grafeld
Department of State

Laurence K. Burgess
Department of Defense

Michael J. Kurtz
National Archives and Records Administration

EXECUTIVE SECRETARY*

William J. Bosanko, Director
Information Security Oversight Office

*The individuals named in this section were those in such positions as of the end of FY 2008.

SUPPORT STAFF

Information Security Oversight Office

BACKGROUND

The Interagency Security Classification Appeals Panel (ISCAP) was created under E.O. 12958 to perform the functions noted above. The ISCAP began meeting in May 1996 and is comprised of senior level representatives appointed by the Secretaries of State and Defense; the Attorney General; the Director, Central Intelligence Agency; the Archivist of the United States; and the Assistant to the President for National Security Affairs. The President selects its Chair, the Director of the Information Security Oversight Office serves as its Executive Secretary, and ISOO provides staff support.

DECLASSIFICATION GUIDES

During FY 2008, the ISCAP continued to review declassification guide submissions from Executive branch agencies in accordance with section 3.3(d) of E.O. 12958, as amended, and the applicable provision of its Government-wide implementing directive (32 C.F.R. Part 2001.30(j)). When approved by the ISCAP, such guides authorize the exemption of information determined by an agency to fall within an exemption category listed in section 3.3(b) of E.O. 12958, as amended. Essentially, the guides permit certain information to be classified for more than 25 years. In order for the ISCAP to approve a guide it must provide a comprehensive description of the information proposed for exemption, a distinct relationship to a specific exemption, a rational justification or explanation of the need for exemption, and a fixed date or event for future declassification.

During the previous fiscal year, the ISCAP issued temporary, interim approvals for declassification guides submitted by the Air Force Technical Applications Center (AFTAC) and the National Security Agency (NSA). In FY 2008, the ISCAP obtained revised versions from these agencies and approved both declassification guides.

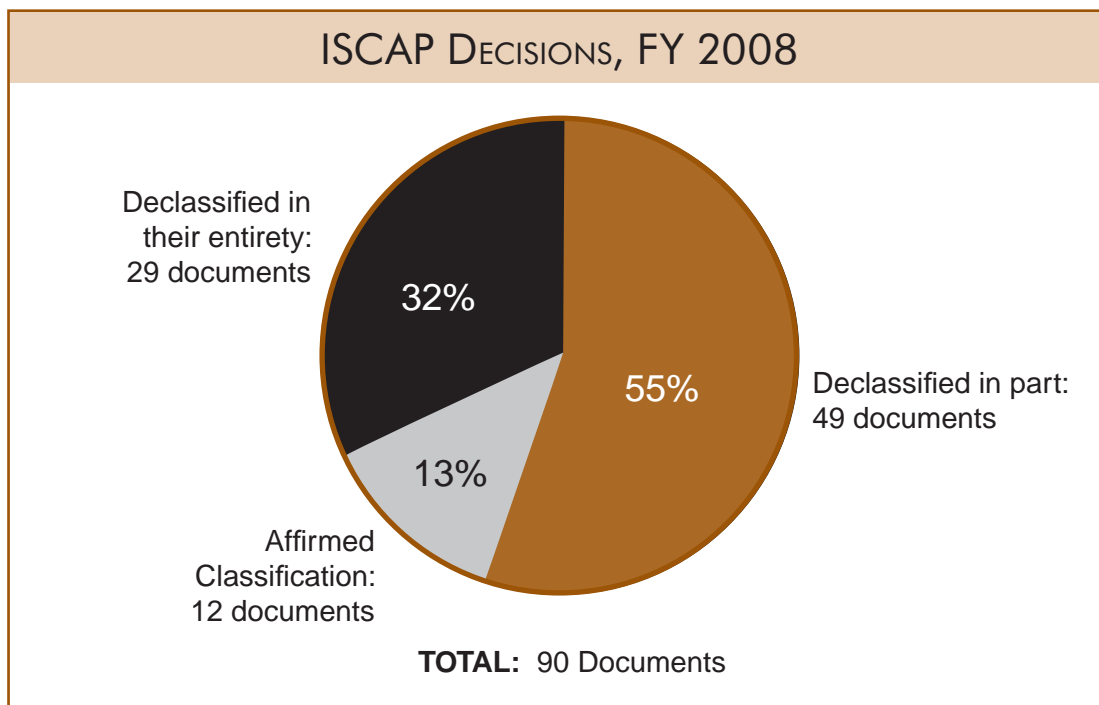
MANDATORY DECLASSIFICATION REVIEW APPEALS

During FY 2008, the ISCAP allocated a majority of its time and resources to processing MDR appeals. The documents within these MDR appeals came before the Panel classified in part or in their entirety and were properly filed with the ISCAP in accordance with E.O. 12958, as amended, and the ISCAP bylaws. In FY 2008, the ISCAP decided on 90 documents that were appealed to the Panel. This activity represents the ISCAP's third most productive fiscal year since its inception in 1996. Additionally, the Panel declassified a greater percentage of information this fiscal year than in previous fiscal years. The Panel declassified additional information in 78 documents (87 percent), and affirmed the prior agency classification decisions in 12 documents (13 percent). Of the 78 documents in which information was declassified, 29 documents (32 percent) were declassified in their entirety and 49 documents (55 percent) had some portions declassified while the classification of other portions was affirmed.

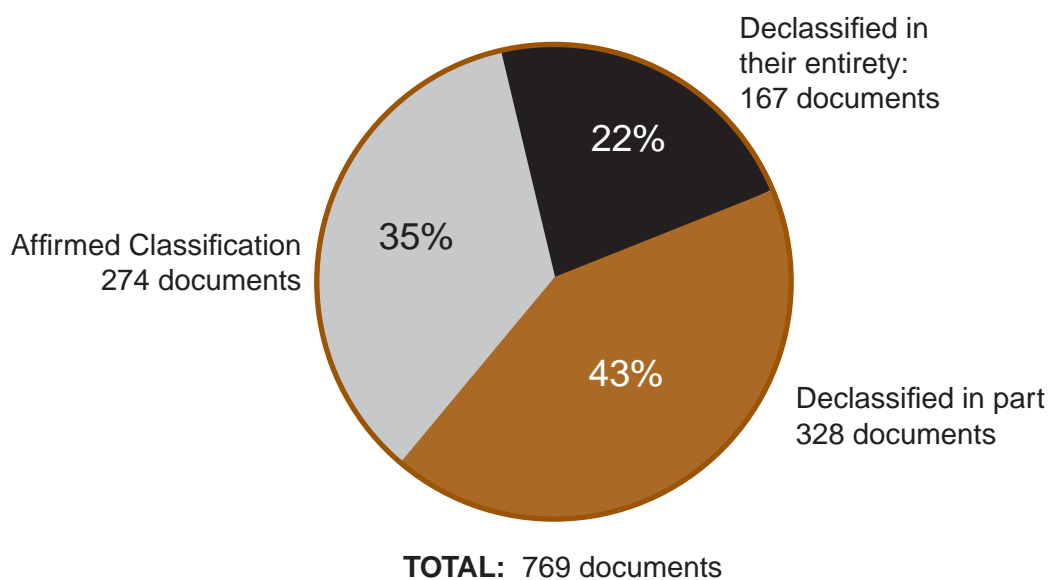
Since May 1996, the Panel has decided upon a total of 769 documents. Of these, the ISCAP declassified additional information in 64 percent

of the documents. Specifically, 167 documents (22 percent) were declassified in their entirety and 328 documents (43 percent) had some portions declassified while the classification of other portions was affirmed. During this time frame, the ISCAP fully affirmed the classification decisions of agencies in 274 documents (35 percent). Documents declassified by the ISCAP may be requested from the Executive branch agency that has custody of them. For assistance in identifying and requesting copies of such documents, please contact the ISCAP staff at ISOO.

Mandatory declassification review is becoming an increasingly popular method for members of the public as a means to request a declassification review of specific documents. Accordingly, many agencies have seen large increases in the number of requests received. The increasing number of initial MDR requests to agencies has led to challenges in processing MDR cases within the time frames outlined in E.O. 12958, as amended, and 32 C.F.R. Part 2001. As a result, the ISCAP has also noted a dramatic increase in the number of MDR appeals brought before the Panel. In FY 2004, the ISCAP received 35 appeals; in FY 2005, the ISCAP received 26 appeals; in FY 2006, the ISCAP received 34 appeals. In FY 2007, the ISCAP experienced a considerable increase in the volume of incoming



ISCAP DECISIONS, MAY 1996 - SEPTEMBER 2008



MDR appeals. In FY 2007 and FY 2008, the Panel received 57 and 58 appeals respectively. During FY 2008 the ISCAP considered and decided upon 90 documents. Despite a productive fiscal year, a backlog of appeals to be considered and decided upon by the Panel has developed. In FY 2004, the ISCAP backlog was 55 appeals, and by the end of FY 2008, the backlog increased to 144 appeals. The members are concerned about the influx of appeals and are developing strategies to address workload increases, including reevaluating work processes to identify inefficiencies, scheduling additional meetings, and assessing staffing resources.

APPEALS CONCERNING ISCAP DECISIONS

In recognition of the need to hear appeals of agency decisions relating to the MDR program and as hearing such appeals would be an undue burden on the President, E.O. 12958 established the ISCAP to advise and assist the President in the discharge of his constitutional and discretionary authority to protect the national security of the United States. Whereas the ISCAP exercises Presidential discretion in its decisions, it serves as the highest appellate authority for MDR appeals.

The ISCAP's decisions are committed to the discretion of the Panel, unless changed by the President. Since its original issuance in 1995, E.O. 12958 has provided agency heads with the ability to appeal the ISCAP's decisions to the President through the Assistant to the President for National Security Affairs. From May 1996 through the amendment of E.O. 12958 in FY 2003, this authority had not been exercised by any agency head, and the same was true for FY 2004 - FY 2008.

However, with the amendment of E.O. 12958 in FY 2003, the Director of Central Intelligence (DCI) was authorized to block declassification by the ISCAP of certain information owned or controlled by the DCI. Such DCI determinations could be appealed by the other ISCAP members to the President (section 5.3(f) of E.O. 12958, as amended).

During FY 2003, the DCI exercised his authority and blocked the declassification of two documents that the ISCAP had voted to declassify. In both instances, members of the ISCAP appealed the DCI's determination to the President through the Assistant to the President for National Security Affairs. During FY 2004, one of these appeals was rendered moot as the DCI opted to declassify the document at issue in its entirety. The status of the second

document remains pending with the President and as such, the document remains classified in its entirety.

The Intelligence Reform and Terrorism Prevention Act of 2004 established the Office of the Director of National Intelligence and amended the National Security Act of 1947 to strike the DCI from the pertinent portions by replacing the DCI with the Director of National Intelligence (DNI). Accordingly, the original DCI authority established with section 5.3(f) of E.O. 12958, as amended, now rests with the DNI.

If you have any questions concerning the ISCAP, please contact the ISCAP staff:

Telephone: 202.357.5250

Fax: 202.357.5907

E-mail: iscap@nara.gov

Additional information about ISCAP may be found on the ISOO website (www.archives.gov/isoo/oversight-groups/iscap).

On-Site Reviews

GENERAL PROGRAM REVIEWS

ISOO has conducted more than 130 on-site reviews of Executive branch agencies since the issuance of E.O. 12958 in 1995. Most of these reviews were general program reviews, which evaluated agencies' implementation of the classified national security information program and covered core program elements, such as program organization and management, classification, security education and training, self-inspections, security violation procedures, safeguarding practices, and classification markings. These reviews have identified deficiencies at agencies in the areas of program management, security education and training, self-inspections, classification, and document markings.

In FY 2008, pursuant to sections 5.2(b)(2) and (4) of E.O. 12958, as amended, ISOO conducted six on-site general program reviews of Executive branch agencies. The findings of these on-site reviews parallel the findings reported in previous fiscal years. Although two of the agencies reviewed this year have sound programs that met nearly all of the requirements of E.O. 12958, as amended, and 32 C.F.R. Part 2001, the majority of the agencies were deficient in one or several core elements of the program, including program management, security education and training, self-inspections, classification, and document markings.

Several agencies were deficient in the organization and management of their programs. Two of the agencies reviewed did not have implementing regulations for E.O. 12958, as amended, and 32 C.F.R. Part 2001, and another two agencies have not devoted sufficient staff to adequately manage and oversee the classified national security information program. At four agencies, the performance contract or other system used to rate civilian or military personnel performance did not include the management of classified information as a critical element or item to be evaluated in the rating of OCAs, security managers or security specialists, and all other personnel whose duties significantly involve the creation or handling of classified information, although required by section 5.4(d)(7) of E.O. 12958, as amended.

ISOO continued to concentrate on the appropriateness of classification decisions during

general program reviews in FY 2008. Reviews focused on evaluating whether agencies were correctly applying the standards for the original and derivative classification of information in accordance with E.O. 12958, as amended, the fundamental reason for the existence of the classified national security information program. Unfortunately, ISOO again found deficiencies in this core program element, including issues with appropriateness of classification, security classification guides, classification challenges, and delegation of original classification authority.

The appropriateness of classification was subject to question in over 25 percent of 1,064 documents reviewed this year. Nearly 18 percent of the documents did not contain either a "Classified By" line or a "Derived From" line. Without this information, it was not possible to readily determine if the information was properly classified. Original classification decisions can only be made by an OCA, who must be identified on the document, and derivative classifications must cite their source document(s) or a classification guide, which would allow derivative classifications to be traced to an original classification decision. Similarly, it was not possible to identify the sources of many derivatively classified documents based on multiple sources. In 14 percent of the documents that were derived from multiple sources, a derivative classification based on multiple sources did not include a list of source materials with or on the official file or record copy of the document, as required by 32 C.F.R. Part 2001.22(b)(1)(ii). Documents must properly cite the basis for classification, both to protect the integrity of the classification system and the security of the information.

ISOO's FY 2006 and FY 2007 annual reports noted deficiencies in agency utilization of updated classification guides. During FY 2008, only one agency reviewed was using a guide that had not been reviewed and updated in the past five years, as required by 32 C.F.R. Part 2001.15. Please see below for further discussion on security classification guides.

Section 1.8 of E.O. 12958, as amended, specifies that authorized holders of information who, in good faith, believe that its classification status is improper are encouraged and expected to challenge the classification status of the information. At one

agency reviewed, no formal procedures were in place to challenge classification, and at another agency, personnel were unaware of this provision. ISOO has reminded the agencies reviewed and the personnel interviewed of this mechanism and noted that training on this topic is among the recommended elements of initial training.

Section 1.3(c)(1) of E.O. 12958, as amended, requires delegations of original classification authority to be limited to the minimum required to administer the program. Officials must have a demonstrable and continuing need to exercise this authority. At two of the agencies ISOO reviewed, the volume of original classification activity did not appear to justify the number of authorities to which original classification authority had been delegated. At one of these agencies the number of original classification authorities was six times the number of original classification decisions in the previous fiscal year.

In FY 2008, ISOO continued to find weaknesses in agency security education and training programs. Two agencies were not providing annual refresher training, and at one agency, a majority of the OCAs did not receive training regarding their OCA responsibilities. Also, the high percentage of documents with errors (reported later in this section) suggests many agencies' classified national security information programs would benefit from additional training on the classification and marking of documents.

Section 5.4(d)(4) of E.O. 12958, as amended, requires agencies to establish and maintain an ongoing self-inspection program, which includes the periodic review and assessment of the agency's classified product. Two agencies were not conducting self-inspections, and one agency had a self-inspection program but did not review its classified product. An active self-inspection program is the most practical means of ensuring classified information is protected and basic security practices are emphasized within the work environment. Absent a self-inspection program, an agency will find it difficult to assess the effectiveness of its classified national security information program and to identify problem areas for resolution.

DOCUMENT REVIEWS

ISOO examines classified documents during general program reviews to evaluate the application of classification and marking requirements of E.O. 12958, as amended. In FY 2008, ISOO reviewed

SECTION 5.4 OF E.O. 12958, AS AMENDED, REQUIRES HEADS OF AGENCIES...TO DEMONSTRATE PERSONAL COMMITMENT AND COMMIT SENIOR MANAGEMENT TO THE SUCCESSFUL IMPLEMENTATION OF THE PROGRAM.

a total of 1,064 documents and found discrepancies in 460 documents (43 percent). There were a total of 686 discrepancies, resulting in an average of 1.5 discrepancies in each of the documents that contained errors and yielding an error rate of 64 errors per 100 documents. The most frequently occurring discrepancies were the application of improper declassification instructions (26 percent), the failure to apply either a "Classified By" or a "Derived From" line (18 percent), incomplete portion markings (11 percent), and the absence of a list of source materials on or attached to the official file or record copy of documents that were derived from multiple sources (8 percent).

CLASSIFICATION GUIDES

Section 2.2 of E.O. 12958, as amended, requires agencies with original classification authority to prepare security classification guides. These guides must be reviewed and updated as circumstances require, but, in any event, at least once every five years as required by 32 C.F.R. Part 2001.15. During on-site reviews conducted over the past several years, ISOO has found that many agencies have not updated their guides within the required time period.

During FY 2008, ISOO requested a status report on security classification guides from all Executive branch agencies granted original classification authority by the President. Each agency provided a list of security classification guides currently in use that identified their security classification guides by name and/or number and provided the date that each classification guide was issued, as well as the date of the last review and update. Overall, 67 percent of the guides agencies reported as being currently in use had not been updated within the past five years. Approximately 85 percent of the guides were created by a few large agencies, and more than 75 percent of these guides have not been updated within the past

five years. At the agencies responsible for the other 15 percent of the guides, only about 15 percent of the guides have not been updated as required. As a result of our inquiry, the agencies responsible for 85 percent of the guides have taken initial steps to have their guides updated during FY 2009. ISOO will monitor the progress of this effort.

AGENCY IMPLEMENTATION OF E.O. 12958, AS AMENDED

The various elements of the classified national security information program all require agencies' attention because they are interrelated. For example, a strong agency self-inspection program can identify program weaknesses that an agency can address in its security education and training program, correcting them before serious or systemic problems develop. A deficiency in one program area can have a detrimental effect on the program as a whole. ISOO's general program reviews are a means to evaluate the program elements and the interrelationship of the elements at each agency we review. These reviews have prompted some agencies to improve their programs. However, our identification of the same deficiencies

at many agencies over 13 years suggests Executive branch-wide efforts, along the line of the security classification guide project described above, are needed in addition to the on-site reviews. In the coming fiscal year and those that follow, ISOO plans to develop and implement Executive branch-wide assessments of the implementation of the core program elements of the E.O. 12958, as amended.

Section 5.4 of E.O. 12958, as amended, requires heads of agencies that originate or handle classified information to demonstrate personal commitment and commit senior management to the successful implementation of the program. It also requires the heads of agencies to commit necessary resources to the effective implementation of the program and to designate a senior agency official to direct and administer the program. The senior agency official's responsibilities include the establishment and oversight of the agency's program, to include the elements that ISOO has found deficient at agencies over the years. Ultimately, the success or failure of the agencies' programs to implement E.O. 12958, as amended, depends on the commitment of the agency heads and senior agency officials to the classified national security information program established by the President.

National Industrial Security Program

Under Executive Order 12829, as amended, “National Industrial Security Program” (NISP), issued in 1993, the Director of ISOO, is “responsible for implementing and monitoring the National Industrial Security Program.” This monitoring responsibility is primarily exercised through the National Industrial Security Program Policy Advisory Committee (NISPPAC), a Federal Advisory Committee established pursuant to section 103 of E.O. 12829, as amended, and comprised of both Government and industry representatives.

The NISPPAC is responsible for recommending changes in industrial security policy through modifications to E.O. 12829, as amended, its implementing directive (32 C.F.R. 2004), and the National Industrial Security Program Operating Manual (NISPOM). The NISPPAC also advises ISOO on all matters concerning the policies of the NISP and serves as a forum to discuss policy issues. The NISPPAC meets at least twice each calendar year at the discretion of the Director of ISOO, who serves as its Chair. In accordance with the Federal Advisory Committee Act, the meetings are open to the public.

During FY 2008, the Director of ISOO called two meetings of the NISPPAC that included discussions on major issues, such as personnel security clearance processing, trust suitability determinations, the implementation of Homeland Security Presidential Directive/HSPD-12, personnel security clearance reciprocity, controlled unclassified information, certification/accreditation of information systems, industry access to threat data, and revisions of the NISPOM.

Under the auspices of the NISPPAC, two ad hoc working groups formed in FY 2007 continued to meet on a quarterly basis to address NISPPAC action items. ISOO chairs both working groups. The Personnel Security Clearance Ad Hoc Working

Group, which includes representatives from the Office of Personnel Management (OPM), the Defense Security Service (DSS), and industry, reviewed and analyzed a comprehensive system of metrics, to include key data points, in order to measure the timeliness of end-to-end clearance processing for industry. The analysis of these metrics has resulted in the identification of suggestions for improvement to the end-to-end security clearance process, some of which have been adopted for implementation. One noteworthy recommendation is the establishment of an electronic fingerprint card capability to facilitate coordination and transmission of fingerprints with the electronic security investigation.

During FY 2008, the Office of the Designated Approval Authority Ad Hoc Working Group began to develop metrics for measuring the timeliness of the end-to-end certification and accreditation (C&A) for information systems, in order to process classified national security information by industry. The objectives of the working group are to bring transparency to the process so that applicable participants understand the requirements and responsibilities necessary for the C&A of information systems and to maximize efficiencies by leveraging industry's and Government's knowledge and expertise. The members of the working group include representatives from the DSS and industry. The group conducted quarterly meetings during FY 2008 and briefed the NISPPAC membership on the results of its work.

Both Government and industry view the ad hoc working groups as a means to enhance transparency, gather empirical data, develop process improvements, and produce effective results for the program as a whole. The continuing work of the groups is reported at NISPPAC meetings and documented through meeting minutes, which are available on the NISPPAC page of the ISOO website (www.archives.gov/isoo/oversight-groups/nisppac).

Acronyms and Abbreviations

AFTAC:	Air Force Technical Applications Center	NASA:	National Aeronautics and Space Administration
Air Force:	Department of the Air Force	Navy:	Department of the Navy
Army:	Department of the Army	NISP:	National Industrial Security Program
C&A:	certification and accreditation	NISPOM:	National Industrial Security Program Operating Manual
CIA:	Central Intelligence Agency	NISPPAC:	National Industrial Security Program Policy Advisory Committee
DCI:	Director of Central Intelligence	NRC:	Nuclear Regulatory Commission
DCIA:	Director, Central Intelligence Agency	NSA:	National Security Agency
DHS:	Department of Homeland Security	NSC:	National Security Council
DNI:	Director of National Intelligence	OCA:	original classification authority
DOD:	Department of Defense	OPM:	Office of Personnel Management
DOE:	Department of Energy	OSTP:	Office of Science and Technology Policy
DSS:	Defense Security Service	PIAB:	President's Intelligence Advisory Board
IRC:	Interagency Referral Center	PIDB:	Public Interest Declassification Board
ISCAP:	Interagency Security Classification Appeals Panel	State:	Department of State
ISOO:	Information Security Oversight Office	Treasury:	Department of the Treasury
Justice:	Department of Justice	USAID:	United States Agency for International Development
MDR:	mandatory declassification review		
NARA:	National Archives and Records Administration		



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