REPORT TO THE
PRESIDENT

ETERNAL VIGILANCE
IS THE PRICE OF LIBERTY

INFORMATION SECURITY OVERSIGHT OFFICE

☆ Authority

Executive Order (E.O.) 12958, as amended, "Classified National Security Information," and E.O. 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). On December 29, 2009, President Obama issued E.O. 13526, "Classified National Security Information," which will be fully implemented 180 days hence.

☆ 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 relationships with agency counterparts and conducts on-site and 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 people and their Government.
- 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

March 31, 2010

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 2009.

This report provides information on the status of the security classification program as required by Executive Order 13526, "Classified National Security Information." It provides statistics and analysis concerning key components of the system, primarily classification and declassification, and coverage of ISOO's 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."

We believe the direction you have provided will garner the commitment that is necessary to support the integrity of the classification system and we will focus our oversight efforts in the remainder of FY 2010 on ensuring that agencies take the actions necessary to bolster the foundation of the classification system. Agencies must strike a balance between preserving, protecting, and advancing National Security and supporting the goal of conducting business in an open manner to the greatest extent possible. Only then will the American people be fully confident that the classified national security information program serves them well.

There were several positive developments this year. Agencies have already made real progress in limiting the delegation of original classification authority. There was also a reduction in original classification activity (new "secrets"). Additionally, agencies assigned a duration of ten years or less in the highest percentage of original classification decisions since FY1996.

However, 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. With the direction you provided on December 29, 2009, there is renewed emphasis on each of these critical areas but sustained vigilance on the part of senior leadership within the agencies is critical to success.

Our data collection efforts also received renewed emphasis in FY 2009 as we sought to better reflect the way that classified information is used in the electronic environment. We issued revised guidance concerning the counting of classification actions which instructed agencies for the first time to include classification decisions in whatever medium they might occur. As a result, the number of reported derivative classification decisions has increased significantly. This does not reflect an increase in classification activity during FY 2009 but rather improved reporting of classification activity. We do not expect the data to stabilize until FY 2011, the first full year of implementation of Executive Order 13526, at which time we will have a new baseline.

Respectfully,

William J. Bosanko
Director

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NOTE: *The FY 2009 Report on Cost Estimates for Security Classification Activities will be reported separately.*

Summary of FY 2009 Program Activity

Classification

- Executive branch agencies reported 2,557 original classification authorities.

- Agencies reported 183,224 original classification decisions.

- Agencies reported using the ten-year-or-less declassification instruction for 67 percent of original classification decisions.

- Executive branch agencies reported 54,651,765 derivative classification decisions.

- Forty-six percent of the classification guides reported as being currently in use had not been updated within the past five years as required.

Declassification

- Under automatic and systematic declassification reviews, agencies reviewed 51,983,587 pages and declassified 28,812,249 pages of historically valuable records.

- Agencies received 7,843 initial mandatory declassification review (MDR) requests.

- Agencies reviewed 293,064 pages under MDR, and declassified 203,142 pages in their entirety, declassified 68,722 pages in part, and retained classification of 21,200 pages in their entirety.

- Agencies reported carrying over 6,582 initial MDR requests into FY 2010.

- Agencies received 186 MDR appeals and processed 177 appeals.

- Agencies declassified 1,350 pages in their entirety on appeal, declassified 3,329 pages in part, and retained classification of 1,654 pages in their entirety.
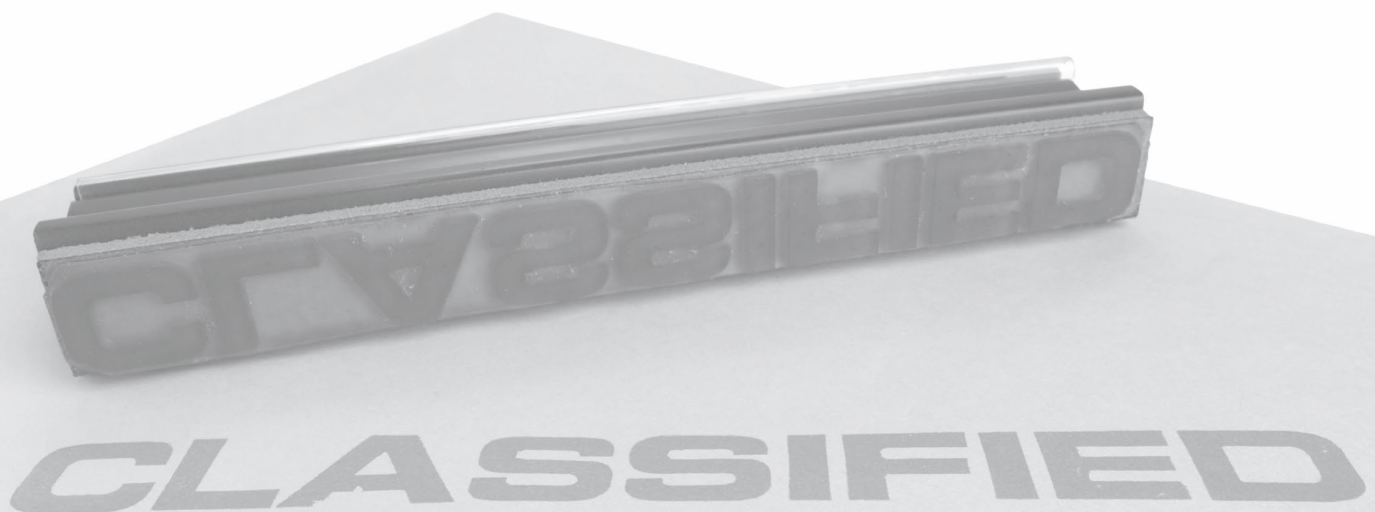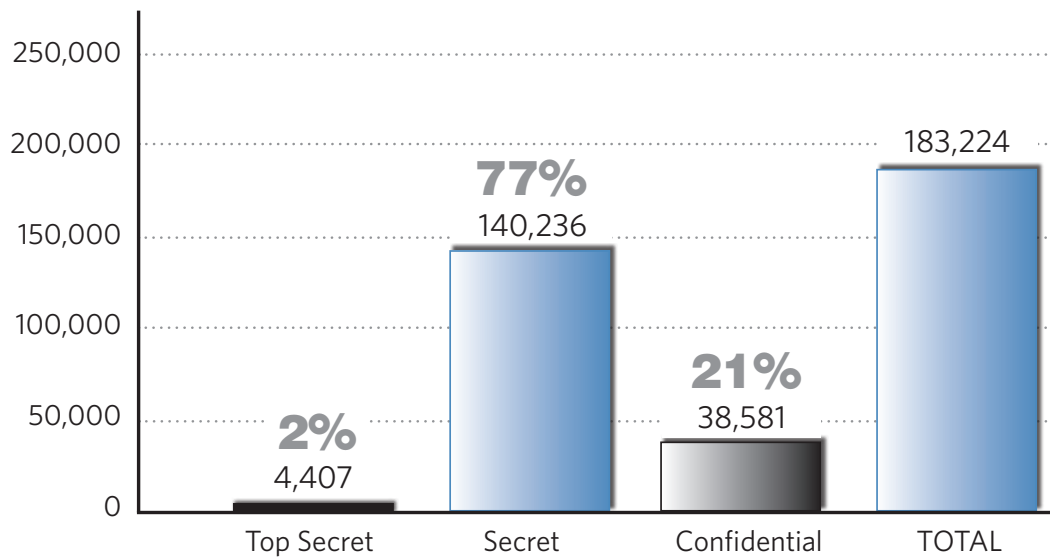
Classification

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. In essence, these are the only new "secrets."

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.
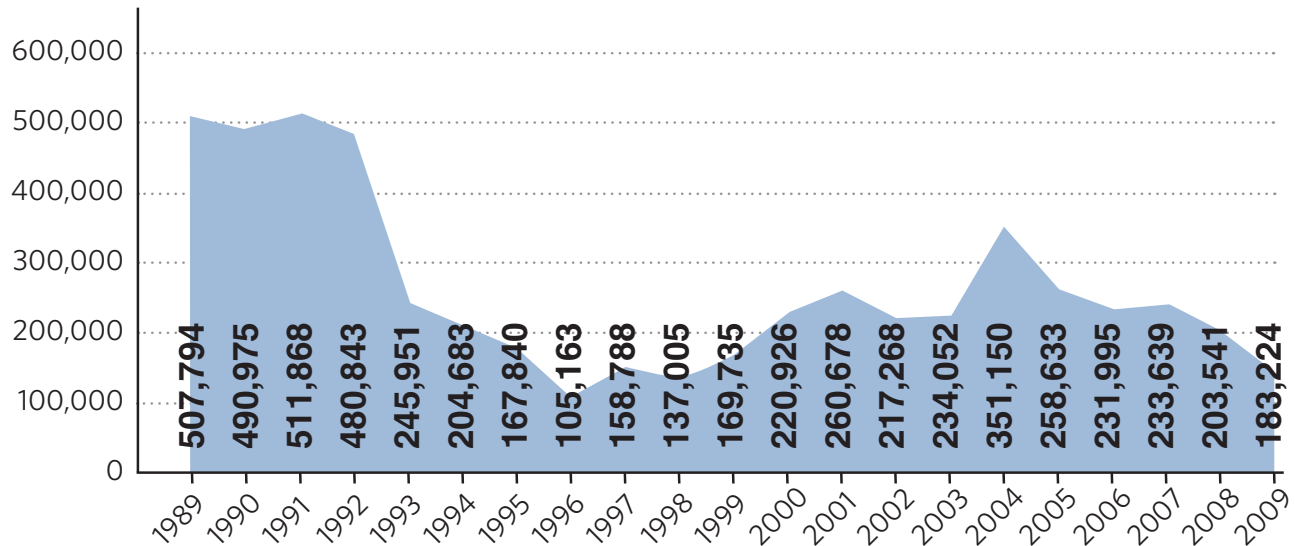
Original Classification Activity, FY 2009

In FY 2009, the ten-year-or-less declassification instruction was used 67 percent of the time, the highest percentage to date.

Original Classification Activity, FY 1989 - FY 2009

Year	Value
1989	507,794
1990	490,975
1991	511,868
1992	480,843
1993	245,951
1994	204,683
1995	167,840
1996	105,163
1997	158,788
1998	137,005
1999	169,735
2000	220,926
2001	260,678
2002	217,268
2003	234,052
2004	351,150
2005	258,633
2006	231,995
2007	233,639
2008	203,541
2009	183,224

FY 2009 Original Classification Activity by Agency

Agency	
Department of the Army	75,080
Department of State	55,224
Department of Justice	48,950
Executive Office of the President	1,609
Department of Defense	967
Department of the Air Force	665
Department of the Navy	502
Department of Homeland Security	178
Department of Agriculture	25
Department of Treasury	10
Central Intelligence Agency	4
Millennium Challenge Corporation	4
Department of Health and Human Services	2
Office of the Director of National Intelligence	2
U.S. Agency for International Development	1
Department of Commerce	1
Total	**183,224**

Agencies reported 183,224 original classification decisions for FY 2009, a 10 percent decrease from the 203,541 decisions reported in FY 2008. From FY 1996 through FY 2009, the annual average of original classification decisions is 211,843.
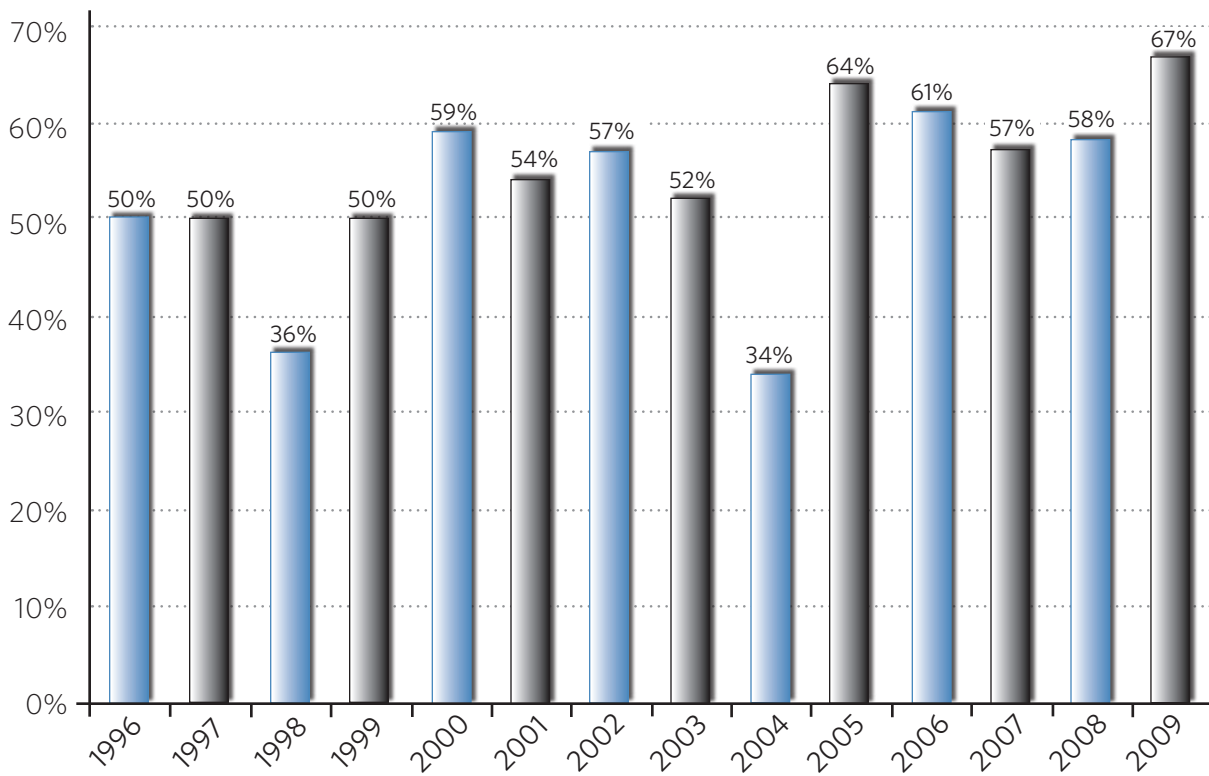
The large number of original classification actions is of concern, particularly with those agencies that have reported high numbers over time. We question whether many of these are truly original decisions. From a policy perspective, there should be little original classification activity and agencies should instead be relying upon classification guides.

For the fifth year in a row, the majority of original classification decisions were assigned declassification dates of ten years or less. In FY 2009, the ten-year-or-less declassification instruction was used 67 percent of the time, an increase over the 58 percent reported in FY 2008 and the highest percentage to date.

Agencies reported 2,557 OCAs in FY 2009, down from 4,109 reported in FY 2008. This is less than the average number of OCAs for FY 1980 through FY 2008 (5,400) and, in fact, is the lowest number of OCAs ever reported.

Use of the "Ten-Years-or-Less" Declassification Category

Bar chart showing percentages from 1996 to 2009: 1996: 50%, 1997: 50%, 1998: 36%, 1999: 50%, 2000: 59%, 2001: 54%, 2002: 57%, 2003: 52%, 2004: 34%, 2005: 64%, 2006: 61%, 2007: 57%, 2008: 58%, 2009: 67%.
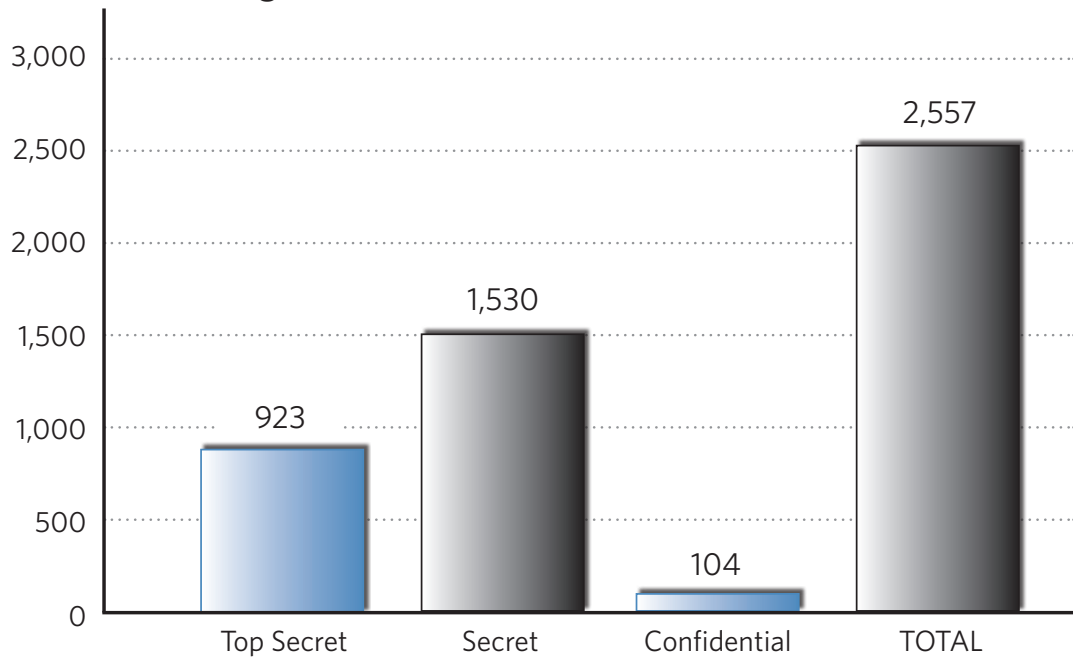
Original Classifiers

Original classification authorities (OCA), 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. Only original classifiers are authorized to 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 2,557 OCAs in FY 2009, down from 4,109 reported in FY 2008. This is less than the average number of OCAs for FY 1980 through FY 2008 (5,400) and, in fact, is the lowest number of OCAs ever reported. Nearly all of this decrease comes from the Department of State, which anticipated the President's memorandum of December 29, 2009, and undertook a special effort to review its past delegations of OCA, resulting in a decrease from 2,560 to 999.
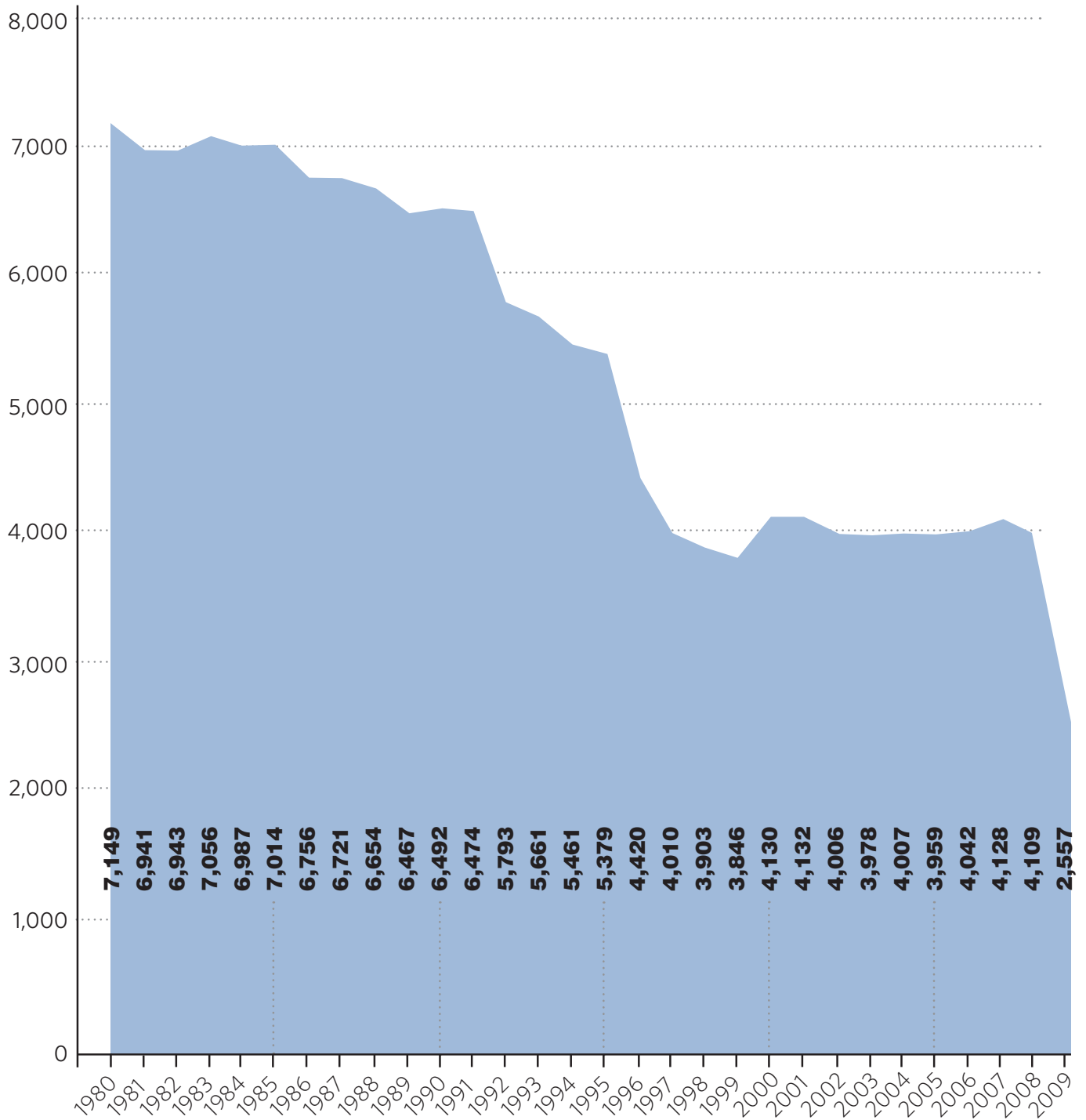
Original Classification Authorities, FY 2009

Category	Count
Top Secret	923
Secret	1,530
Confidential	104
TOTAL	2,557

Number of Original Classification Authorities, FY 1980 - FY 2009

Year	Value
1980	7,149
1981	6,941
1982	6,943
1983	7,056
1984	6,987
1985	7,014
1986	6,756
1987	6,721
1988	6,654
1989	6,467
1990	6,492
1991	6,474
1992	5,793
1993	5,661
1994	5,461
1995	5,379
1996	4,420
1997	4,010
1998	3,903
1999	3,846
2000	4,130
2001	4,132
2002	4,006
2003	3,978
2004	4,007
2005	3,959
2006	4,042
2007	4,128
2008	4,109
2009	2,557

ISOO worked with representatives of the agencies to develop and issue new guidance concerning the counting of classification actions, and agencies were asked to disregard the concept of the finished product and instead focus on classification decisions wherever they might occur.

Derivative Classification

Derivative classification is the act of incorporating, paraphrasing, restating, or generating in new form information that is already classified and, therefore, are not considered new "secrets." 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 which identifies elements of information regarding a specific subject that must be classified and establishes the level and duration of classification for each such element.

Derivative classification actions utilize information from the original category of classification. 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.

Just as the policy has struggled to move beyond its paper-based origins, so too have we struggled with the counting of classification decisions in the electronic environment. Over time, methods of communicating classified information electronically have expanded significantly, to include classified web pages, blogs, wikis, bulletin boards, instant messaging, etc. This has been particularly true in recent years as agencies have sought to increase information sharing. Classified products are now disseminated to more consumers, and agencies are leveraging all forms of online tools to publish, inform, and collaborate.

Our guidance has evolved over time from at first counting only derivative classification actions agencies considered to be finished products for retention or dissemination to more recently, when it was acknowledged that e-mail and other electronic

products that might meet the same criteria. As a result, the data reported has not truly reflected the changing ways agencies have generated and used classified information in the electronic environment. Additionally, the treatment of such classification activity has become inconsistent as agency programs have faced this challenge in different ways. For example, the Central Intelligence Agency (CIA), which has always had one of the most mature means to provide statistically valid data, developed the capability to include electronic classification decisions early. As a result, over time the data made CIA appear responsible for the majority of all derivative classification, which ISOO knew was not the case through our other oversight activities.

In FY 2009, ISOO worked with representatives of the agencies to develop and issue new guidance concerning the counting of classification actions, and agencies were asked to disregard the concept of the finished product and instead focus on classification decisions wherever they might occur. With respect to e-mail, agencies were asked not to count e-mail messages that were merely "replies" or "forwards" and instead count only those messages containing new original or derivative classification decisions.

As we revised the guidance, we acknowledged that it might not be possible for all agencies to comply this fiscal year since counting in the electronic environment had never been done before in many agencies. Fortunately, some of the largest classifying agencies were able comply in FY 2009. The National Security Agency and the Department of Homeland Security (DHS) deserve special mention for their prompt compliance. Moreover, we acknowledged that including classification actions that occur in the electronic environment would likely significantly increase the number of classification decisions that we report. It is important to note that this does not reflect an

Agencies reported a total of 54.7 million derivative classification actions in FY 2009, a 135 percent increase from the 23.2 million derivative actions reported in FY 2008. The increase is largely attributed to more accurate data provided by agencies using the revised guidance that better captured existing activity.
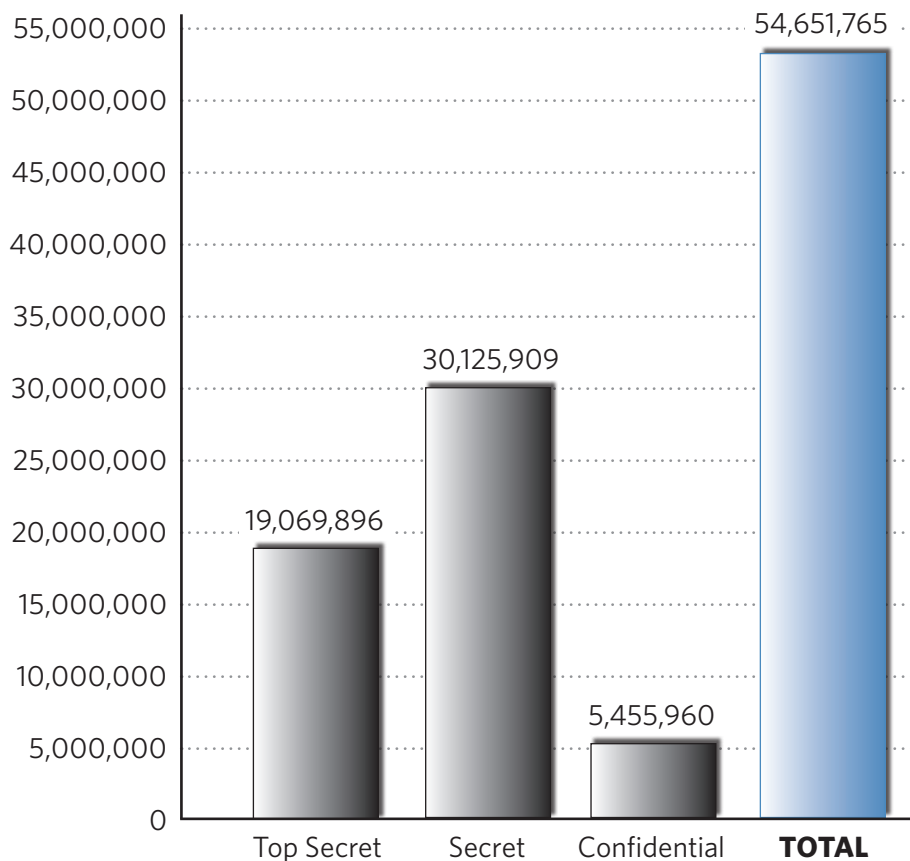
increase in classification activity during FY 2009 but rather improved reporting of classification activity that was already occurring. Understanding the rapidly changing ways in which agencies use classified information and adjusting the policy and our oversight remain significant challenges for ISOO, but steps such as the revised guidance are necessary despite the related additional challenges.

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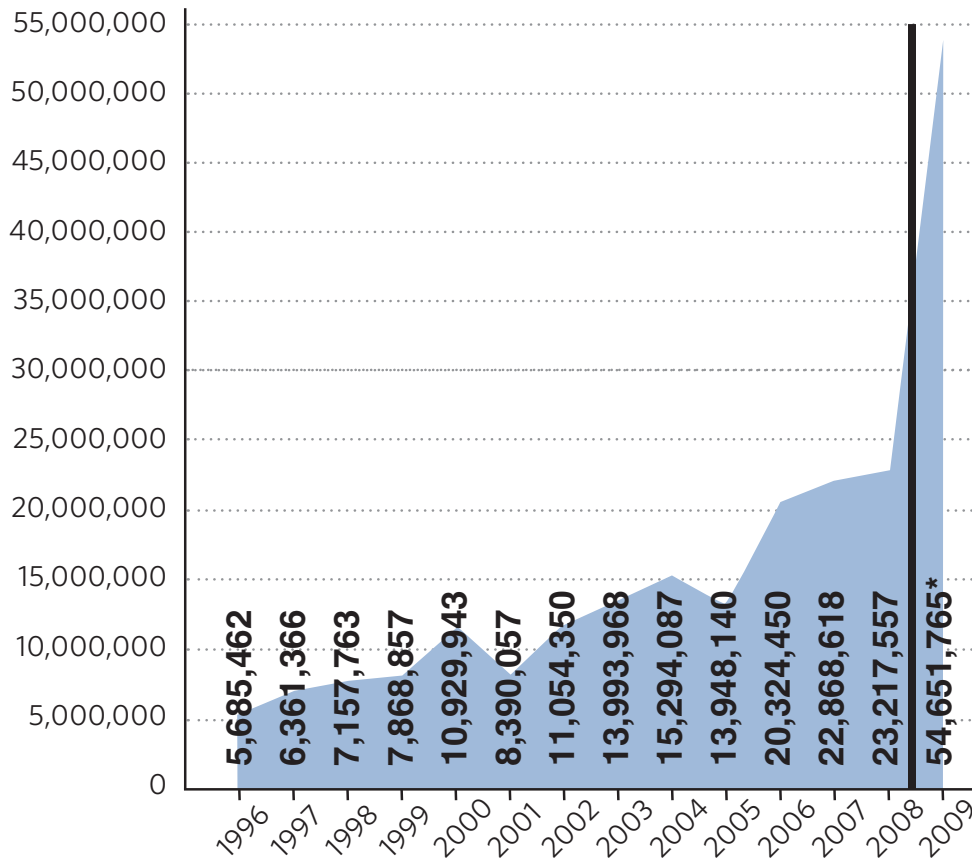
As agencies still face the challenge of providing a more accurate count of their activity, we do not expect the data to stabilize until FY 2011, the first full year of implementation of E.O. 13526, at which time we will have a new baseline. In the meantime, we are considering the data and how in FY 2010 we might estimate and report the classification activity that has occurred in the past in the electronic environment.

Derivative Classification Activity, FY 2009

Category	Value
Top Secret	19,069,896
Secret	30,125,909
Confidential	5,455,960
TOTAL	54,651,765

Derivative Classification Activity, FY 1996 - FY 2009

1996	5,685,462
1997	6,361,366
1998	7,157,763
1999	7,868,857
2000	10,929,943
2001	8,390,057
2002	11,054,350
2003	13,993,968
2004	15,294,087
2005	13,948,140
2006	20,324,450
2007	22,868,618
2008	23,217,557
2009	54,651,765 *

The dramatic increase between FY 2008 and FY 2009 derivative classification totals reflects ISOO's issuance of revised guidance concerning the counting of classification actions.

Combined Original and Derivative Classification Activity

Together, original and derivative classification decisions make up the combined classification activity. In FY 2009, the reported combined classification activity is 54.8 million decisions, an increase of 31.4 million over the 23.4 million decisions reported for FY 2008. The average combined classification activity from FY 1996 through FY 2009 is 16.1 million decisions per year.
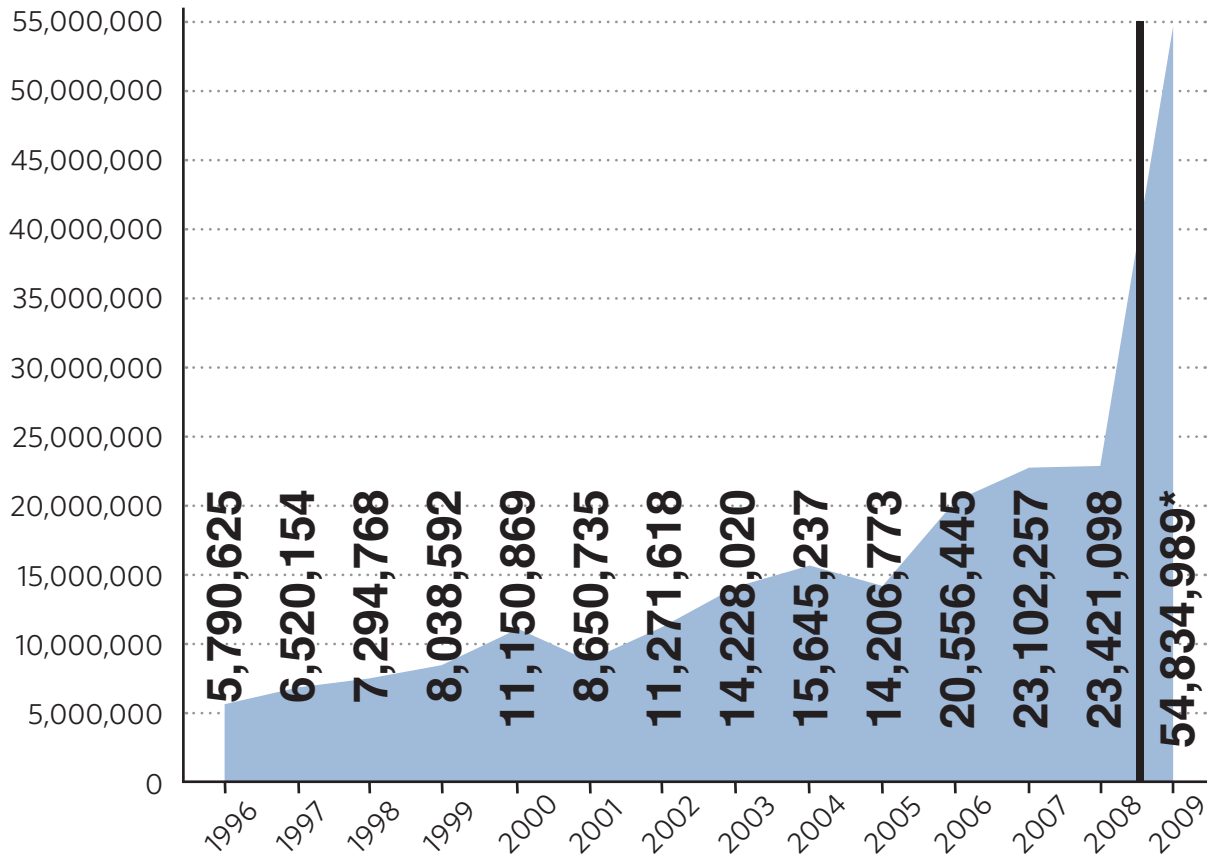
Classification Challenges

Classification challenges provide a mechanism to promote sound classification decisions. 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. ISOO's program reviews have revealed that many authorized holders of classified information are not aware of this provision, and therefore, do not challenge classification decisions as much as should be expected in a robust system. Agencies reported 365 formal challenges in FY 2009, down from 436 reported in FY 2008.

Most agencies need to improve the means by which authorized holders of classified information are alerted and reminded of the expectation for challenging classification. We recommend greater commitment by senior management and special emphasis as part of agency security education and training programs.

Combined Original and Derivative Classification Activity, FY 1996 - FY 2009

Year	Value
1996	5,790,625
1997	6,520,154
1998	7,294,768
1999	8,038,592
2000	11,150,869
2001	8,650,735
2002	11,271,618
2003	14,228,020
2004	15,645,237
2005	14,206,773
2006	20,556,445
2007	23,102,257
2008	23,421,098
2009	54,834,989*

The dramatic increase between FY 2008 and FY 2009 derivative classification totals reflects ISOO's issuance of revised guidance concerning the counting of classification actions.
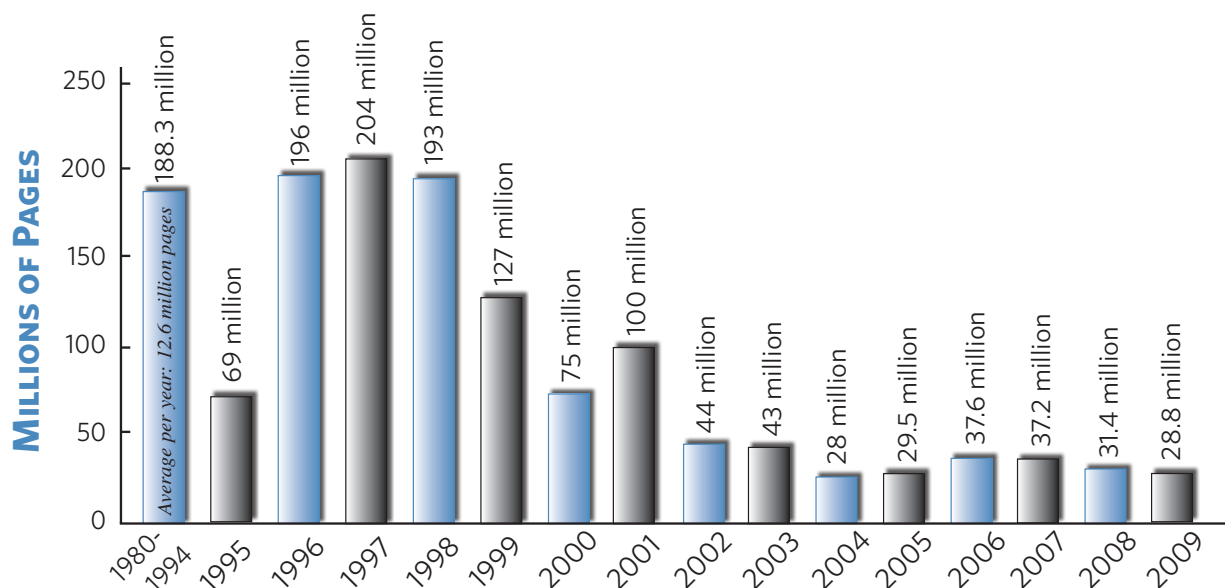
Declassification

Background

Declassification is defined as the authorized change in status of information from classified to unclassified and is an integral part of the security classification system. There are three declassification programs within the Executive branch: automatic declassification, systematic declassification review, and mandatory declassification review. 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 those records 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.
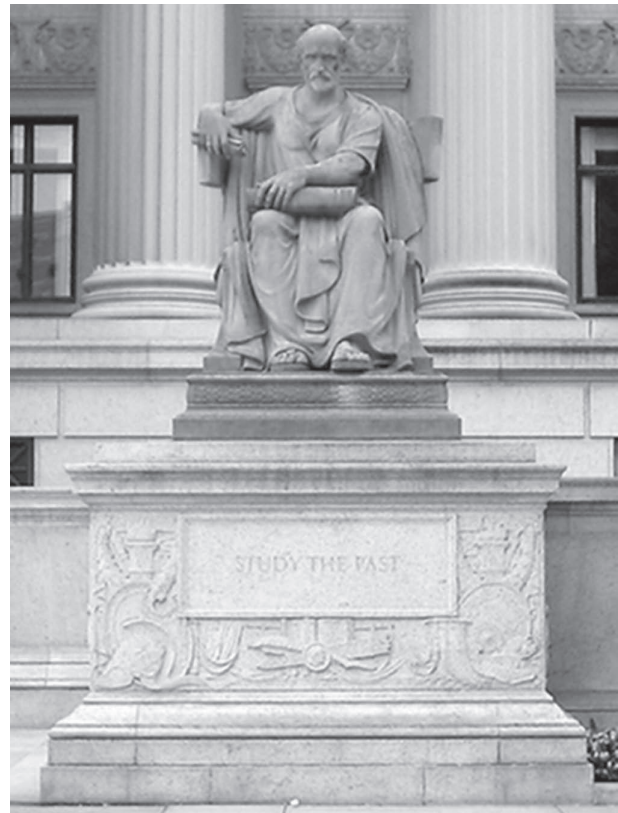
In "The Past," on the Pennsylvania Avenue side of the building, an aged figure with a scroll and closed book imparting the knowledge of past generations "stares down the corridors of time." The words on the base enjoin, "Study the Past."

1.43 Billion Pages Declassified, FY 1980 - FY 2009*

MILLIONS OF PAGES

- 1980-1994: 188.3 million (Average per year: 12.6 million pages)
- 1995: 69 million
- 1996: 196 million
- 1997: 204 million
- 1998: 193 million
- 1999: 127 million
- 2000: 75 million
- 2001: 100 million
- 2002: 44 million
- 2003: 43 million
- 2004: 28 million
- 2005: 29.5 million
- 2006: 37.6 million
- 2007: 37.2 million
- 2008: 31.4 million
- 2009: 28.8 million

* Excluding Mandatory Declassification Review

Statistical data shows that the percentage of pages being declassified remains relatively constant with an average of 55% of pages reviewed being declassified from FY 2004 through FY 2009.

Pages Reviewed and Pages Declassified

During FY 2009, the Executive branch reviewed 52 million pages under the automatic and systematic declassification review provisions, an increase of 1 percent from the 51.5 million pages reviewed in FY 2008. The number of pages declassified decreased 8 percent, from 31.4 million pages declassified in FY 2008 to 28.8 million pages declassified in FY 2009. 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 36.9 million pages, or 71 percent of the total number of pages reviewed by all agencies. Of the 28.8 million pages declassified by all agencies, DoD and the three military departments declassified 23.9 million pages which accounts for 83 percent of the total number of pages declassified. In FY 2008, agencies declassified 61 percent of 51.5 million pages reviewed; in FY 2009, agencies declassified 55 percent of 52 million pages reviewed. Statistical data shows that the percentage of pages being declassified remains relatively constant with an average of 55 percent of pages reviewed being declassified from FY 2004 through FY 2009.
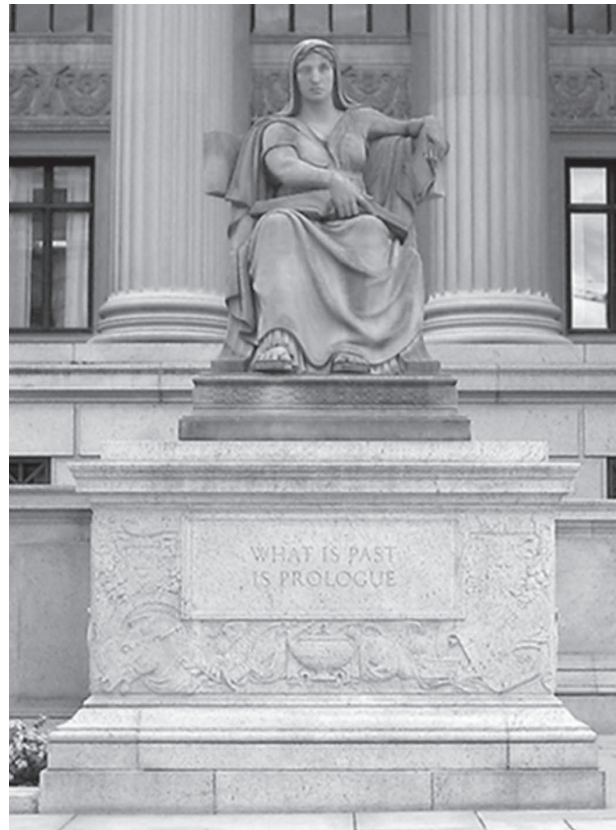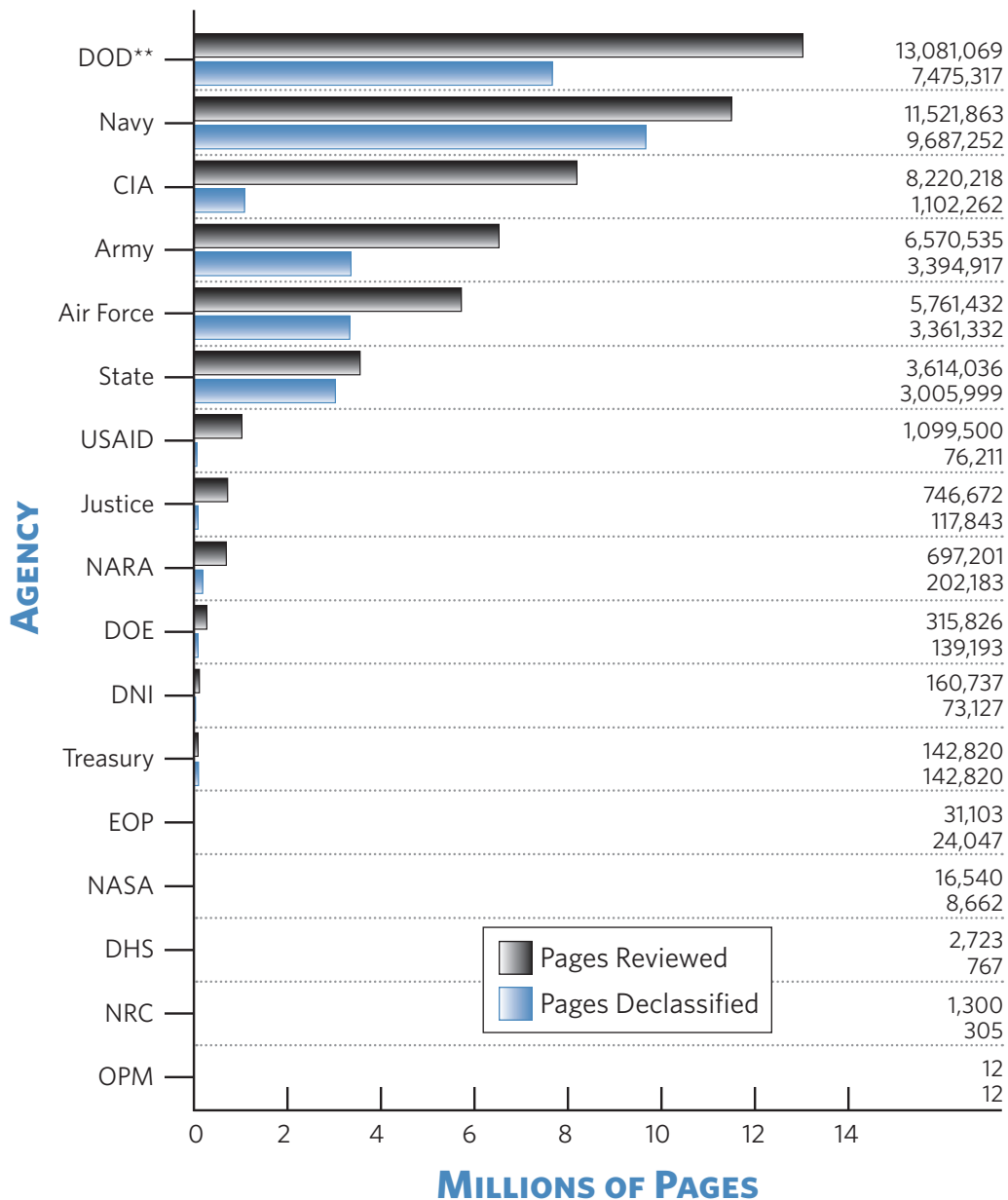
"The Future" sits on the Pennsylvania Avenue side of the building. The young woman lifts her eyes from the pages of an open book and gazes into the future. Its base is inscribed with a line inspired by Shakespeare's play The Tempest: "What is Past is Prologue."

Number of Pages Reviewed and Declassified by Agency, FY 2009*

Agency	Pages Reviewed	Pages Declassified
DOD**	13,081,069	7,475,317
Navy	11,521,863	9,687,252
CIA	8,220,218	1,102,262
Army	6,570,535	3,394,917
Air Force	5,761,432	3,361,332
State	3,614,036	3,005,999
USAID	1,099,500	76,211
Justice	746,672	117,843
NARA	697,201	202,183
DOE	315,826	139,193
DNI	160,737	73,127
Treasury	142,820	142,820
EOP	31,103	24,047
NASA	16,540	8,662
DHS	2,723	767
NRC	1,300	305
OPM	12	12

MILLIONS OF PAGES

TOTAL: 51,983,587 pages reviewed
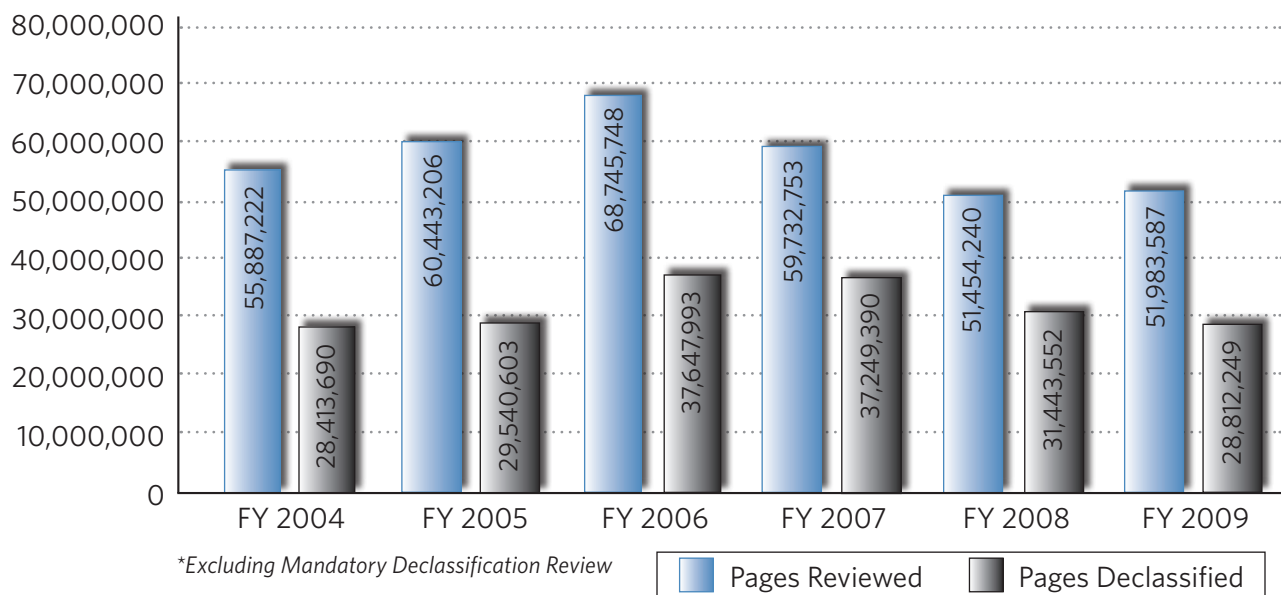28,812,249 pages declassified

Excluding Mandatory Declassification Review

**Less Air Force, Army, Navy*

Note: *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.*

Total Number of Pages Reviewed and Declassified,* FY 2004 - FY 2009

	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Pages Reviewed	55,887,222	60,443,206	68,745,748	59,732,753	51,454,240	51,983,587
Pages Declassified	28,413,690	29,540,603	37,647,993	37,249,390	31,443,552	28,812,249

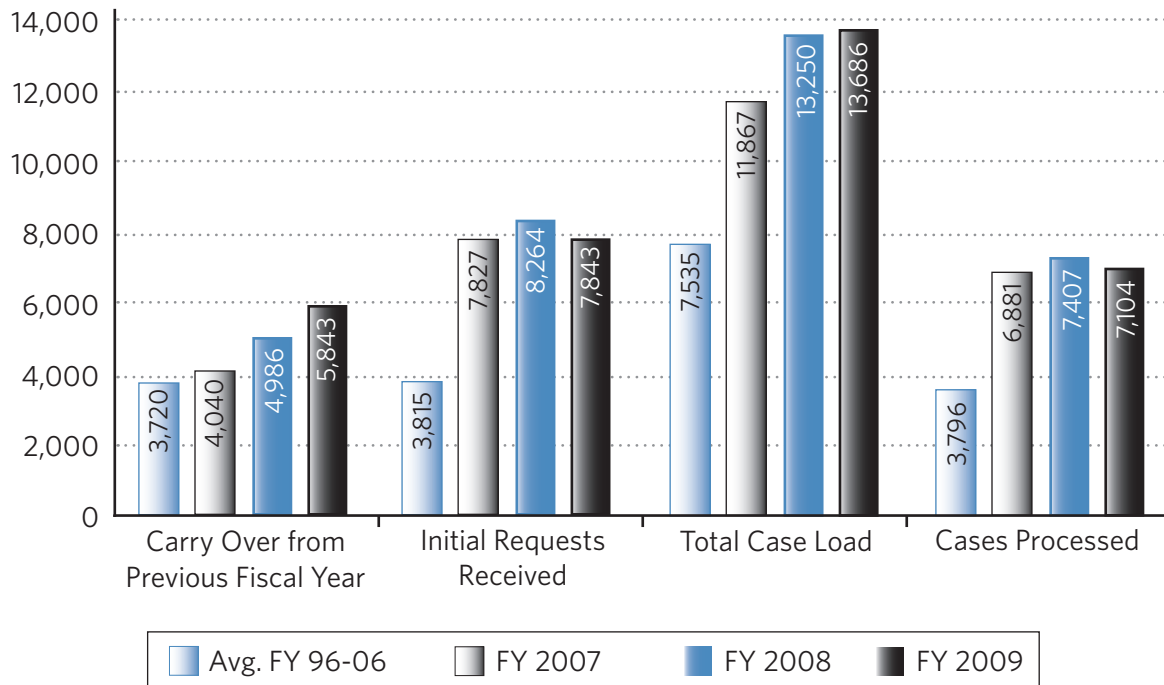*Excluding Mandatory Declassification Review

From FY 1996 through FY 2009, agencies received an average of 4,707 initial requests per fiscal year. Agencies received 7,843 initial requests for MDR in FY 2009, slightly lower than the 8,264 requests received in FY 2008.

Mandatory Declassification Review

The 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 FOIA.

Initial Requests

From FY 1996 through FY 2009, agencies received an average of 4,707 initial requests per fiscal year. Agencies received 7,843 initial requests for MDR in FY 2009, slightly lower

than the 8,264 requests received in FY 2008. In FY 2009, DoD, including the three military departments, received a total of 4,645 initial requests, 59 percent of the Executive branch total. NARA received the second highest number of initial requests, at 1,481 (19 percent), and CIA received 1,139 initial requests (15 percent). When combined, these three agencies received 93 percent of all initial MDR requests for FY 2009.

Agencies processed 7,104 requests in FY 2009, a decrease of 303 requests from the previous fiscal year. DoD (3,458), NARA (1,305), and CIA (1,206) were responsible for processing 84 percent of the MDR requests. The 7,104 requests processed in FY 2009 contained 293,064 pages. Of these, 203,142 pages were declassified in their entirety (69 percent); 68,722 pages were declassified in part (24 percent); and 21,200 pages remained classified in their entirety (7 percent). While the total number of pages processed increased by 31,781 pages, the percentage of pages

MDR Program Activity - Initial Requests

	Carry Over from Previous Fiscal Year	Initial Requests Received	Total Case Load	Cases Processed
Avg. FY 96-06	3,720	3,815	7,535	3,796
FY 2007	4,040	7,827	11,867	6,881
FY 2008	4,986	8,264	13,250	7,407
FY 2009	5,843	7,843	13,686	7,104

Agencies processed 7,104 requests in FY 2009, a decrease of 303 requests from the previous fiscal year. DoD (3,458), NARA (1,305), and CIA (1,206) were responsible for processing 84 percent of the MDR requests.

declassified in their entirety, declassified in part, or denied in full remained statistically close to the numbers reported in FY 2008.

MDR has proven to be a successful program. From FY 1996 through FY 2009, agencies received 65,895 initial requests and processed 3,102,323 pages. As a result of initial MDR processing, only 263,329 pages (9 percent) remained classified in their entirety after an initial MDR review: 1,934,531 pages were declassified in their entirety (62 percent), and 904,463 pages were declassified in part (29 percent).
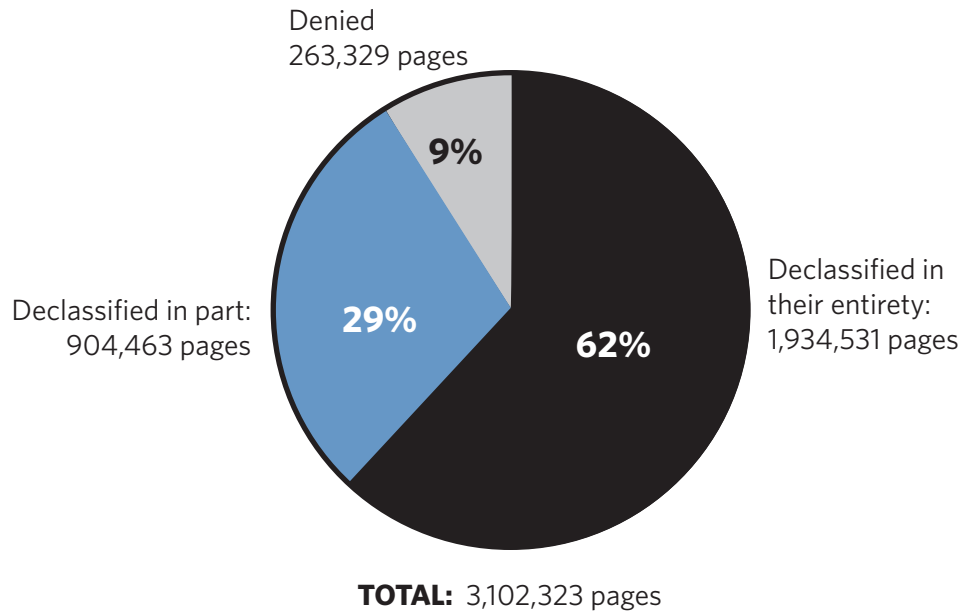
However, agencies have been unable to keep pace with the influx of initial requests. From FY 1996 through FY 2008, agencies carried over an average of 3,842 initial MDR requests from one fiscal year into the next. In FY 2008, agencies reported 5,843

initial requests carried over into FY 2009. This figure increased again in FY 2009 as agencies reported 6,582 initial requests carried over into FY 2010, an increase of 739 from the previous year and over 2,740 more than the FY 1996 through FY 2008 average. In FY 2008, three agencies—NARA (2,586 requests), DoD (1,667 requests), and CIA (1,063 requests)—accounted for the majority of requests carried forward into FY 2009. Those same agencies account for the majority of requests being carried forward into FY 2010—NARA (2,762), DoD (2,165), and CIA (996).

The Department of Energy (DOE) and DHS have made notable progress in decreasing the size of their MDR backlogs. DOE carried over 112 requests into FY 2009 but only 71 into FY 2010. DHS carried over 51 requests into FY 2009 and only 3 into FY 2010.

Disposition of Initial MDR Requests, FY 1996 - FY 2009

Denied
263,329 pages

Declassified in part:
904,463 pages

Declassified in
their entirety:
1,934,531 pages

9%

29%

62%

TOTAL: 3,102,323 pages

Agencies processed 177 appeals in FY 2009. DoD (76 appeals, 43 percent), CIA (77 appeals, 43 percent), and NARA (14 appeals, 8 percent) accounted for 94 percent of the total appeals processed in FY 2009.

Appeals

During FY 2009, agencies received 186 appeals of agency decisions to deny information after processing and deciding upon initial MDR requests. Three agencies accounted for 92 percent of these appeals: DoD (93 appeals, 50 percent), CIA (58 appeals, 31 percent), and NARA (20 appeals, 11 percent). Only three other agencies reported receiving new appeals: Air Force (6 appeals, 3 percent), the Department of State (5 appeals, 3 percent), and DOE (4 appeals, 2 percent).

Agencies processed 104 appeals in FY 2007, 178 appeals in FY 2008, and 177 appeals in FY 2009. DoD (76 appeals, 43 percent), CIA (77 appeals, 43 percent), and NARA (14 appeals, 8 percent) accounted for 94 percent of the total appeals

processed in FY 2009. Although agencies continue to report progress in adjudicating and processing appeals, ISOO remains concerned about the large backlog carried over each fiscal year. In FY 2007, agencies reported carrying over 105 appeals; in FY 2008, agencies reported carrying over 183 appeals; and in FY 2009, 5 agencies (CIA, 71 appeals; DoD, 47 appeals; DOE, 1 appeal; NARA, 53 appeals; and State, 20 appeals) reported carrying 192 appeals into FY 2010.

Of the 177 appeals processed in FY 2009, agencies reviewed 6,333 pages, representing a 2 percent decrease from the 6,472 pages reviewed in FY 2008. However, this represents 1,740 pages more than the average of 4,632 pages reviewed from FY 1996 through FY 2008. The processing of MDR appeals by agencies in FY 2009 resulted

. . . agency representatives have informally pointed to the focus on the requirements of FOIA when speaking to their compliance with 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.
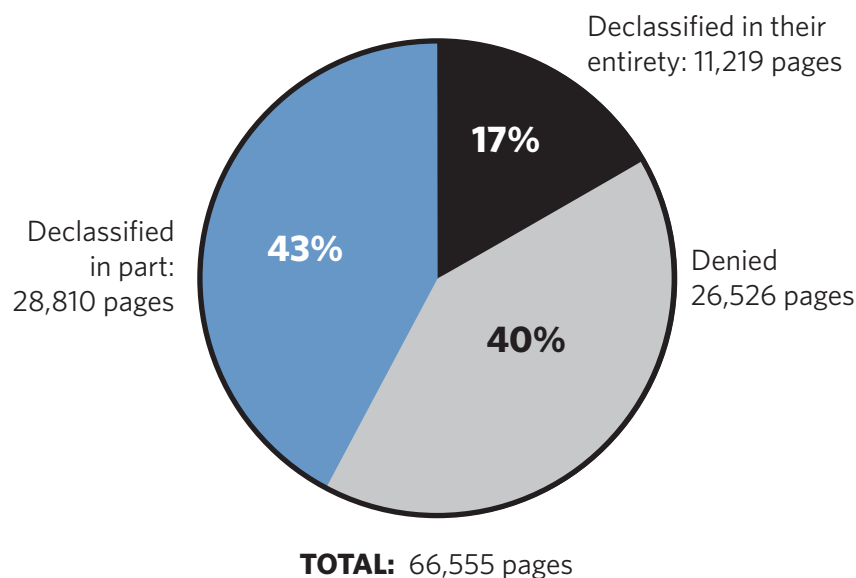
in the declassification of information in 4,679 pages, 74 percent of the pages reviewed. Of these pages, 1,350 were declassified in their entirety (21 percent) and 3,329 were declassified in part (53 percent). Agencies affirmed the classification of 1,654 pages (26 percent) in their entirety. Since FY 1996, agencies processed 66,555 appealed pages. Of these, 11,219 pages were declassified in their entirety (17 percent); 28,810 pages were declassified in part (43 percent); and 26,526 pages remained classified in their entirety (40 percent).

MDR Program Requirements

Agencies are expected to provide sufficient resources to process MDR requests, conduct

a review of the information for its possible declassification, and adjudicate and process appeals in a timely manner. Agencies must evaluate their own MDR programs and take action to eliminate their MDR backlogs. Since the issuances of E.O. 13392, "Improving Agency Disclosure of Information," on December 14, 2005, and, more recently, the President's FOIA memorandum of January 21, 2009, agency representatives have informally pointed to the focus on the requirements of FOIA when speaking to their compliance with 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.

Disposition of MDR Appeals, FY 1996 - FY 2009

Declassified in their entirety: 11,219 pages — 17%

Denied 26,526 pages — 40%

Declassified in part: 28,810 pages — 43%

TOTAL: 66,555 pages

Reviews

Document Reviews

To address a long-standing concern that Executive branch agencies fail to properly mark a large percentage of the classified documents they create, ISOO shifted emphasis during FY 2009 from on-site reviews to document reviews. ISOO began an oversight effort that focuses on documents created by agencies that generate the largest amounts of classified information. Based on the prior year's Standard Form (SF) 311 data, ISOO selected 15 agencies that made at least 10,000 derivative classification actions. ISOO analysts reviewed a minimum of 100 documents from each agency, limiting the review to documents created since February 2009. Since classified materials are commonly created and distributed electronically, ISOO's review was conducted primarily in the electronic environment on government-wide and/or agency-based classified information systems and networks.

The review encompassed 1,565 documents, of which 1,019 documents (65 percent) contained discrepancies. There were a total of 1,805 discrepancies in the documents or 115 discrepancies per 100 documents. Three-fourths of the agencies had discrepancies in more than 50 percent of their documents; several agencies had error rates higher than 90 percent. Of greatest concern were discrepancies that raised questions about the appropriateness of classification of the documents, such as the absence of a "Classified By" or "Derived From" line (18 percent of the documents), the failure to include a list of sources with documents derived from multiple sources (14 percent), and over-classification (3 percent). In total, the classification of 35 percent of the documents was questionable.

The following list outlines major discrepancies that were identified:

- ■ Classification Errors
  - No "Classified By" or "Derived From" line.
  - Multiple sources not identified.

- ■ Marking Errors
  - Portion markings missing from subject lines, charts, and images.
  - Total absence of portion markings on a large percentage of slide presentations.
- ■ Declassification Errors
  - No declassification instructions.
  - Invalid declassification instructions (MR, "DNI Only").
  - Obsolete declassification instructions (OADR, X1–X8).
  - Use of automatic declassification exemption (25X1–9) without a date or event.
  - Use of 25X1-human on documents that did not contain information that would reveal the identity of a confidential human source or human intelligence source.

Agencies throughout the Executive branch must address the improper marking of their classified documents to ensure classified national security information is properly protected. Markings are applied to leave no doubt about the classified status of the information, the level of protection required, and the duration of classification. Agencies should provide more detailed and focused training to classifiers and perform regular reviews of representative samples of their original and derivative classification actions. Agencies could supplement their on-site reviews of classified materials with an on-line review, similar to the ISOO document review, which can extend the reach of their security offices and help identify activities that need further oversight and assistance with marking and classification. Electronic marking tools that compel classifiers to apply the required markings can significantly reduce the number of marking errors; document templates can also help in this area, as does the application of quality control procedures. Given the persistence and pervasiveness of marking and classification discrepancies in the Executive branch, all agencies must make a determined and sustained effort to correct them. With the issuance of E.O. 13526, we

ISOO conducted three general on-site program reviews of Executive branch agencies. Each agency was deficient in at least one core element of the program, including program management, classification management, security education and training, and self-inspections.

now have additional training requirements for all original and derivative classifiers, and the ability to hold derivative classifiers accountable for their actions. This should lead to greater accuracy and reduce over-classification.

On-Site Reviews

During FY 2009, ISOO conducted three general on-site program reviews of Executive branch agencies. Each agency was deficient in at least one core element of the program, including program management, classification management, security education and training, and self-inspections. Specific problems identified in the organization and management of agency programs included the lack of updated agency implementing regulations and non-compliance with the requirement that the performance contract or other system used to rate civilian or military personnel performance 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.

Each of the agencies was deficient in at least one element of classification management: the appropriateness of classification was questionable in over 17 percent of 646 documents reviewed during the on-site reviews, and a number of classification guides had not been reviewed and updated in the past five years. One agency did not have formal procedures in place to allow for classification challenges. One agency's security education and training program did not cover required elements for initial briefings, nor did it provide specialized training for derivative classifiers. At one agency, the self-inspection program was ineffective in evaluating the marking of classified documents.

Declassification Assessments

In FY 2009, ISOO continued an initiative begun in FY 2008 to evaluate the results of agencies' automatic declassification review programs. Using SF 311 submission data from FY 2008, ISOO identified 19 agencies whose declassification programs were substantial enough to warrant assessment. Each agency was contacted in March 2009 and asked to provide information on bodies of records for which they completed declassification reviews during the six month period from October 1, 2008, through March 31, 2009. ISOO analysts used the data collected to determine the sample size and specific documents to review during on-site declassification assessments.

From May through August 2009, ISOO analysts conducted on-site declassification assessments and evaluated the program results for each of the 19 agencies. Assessments focused on three areas of concern: missed equities, inappropriate referrals, and improper exemptions. A commonly missed equity was the mention of the security classification interest of one agency in the record of another agency that had not been identified by the initial reviewer for referral to that agency. Inappropriate referrals denoted occasions when referrals were made to agencies that lacked the authority to exempt information from declassification or had waived their interest in the information. Improper exemptions included instances in which agencies attempted to exempt a document from automatic declassification under an exemption category not permitted by that agency's declassification guide as approved by ISCAP. The occurrence of any of these three issues was noted by ISOO analysts and factored into the agency score. In addition to these three categories of findings from within the statistical sample, ISOO analysts examined records from outside the sample in order to develop a more complete picture of agencies' declassification programs.

. . . agencies have shown improvement in their declassification programs since the FY 2008 assessments. The average score increased by nearly 5 percent, and the number of agencies receiving scores of 90 or above increased 17 percent.

Within the statistical sample, ISOO analysts encountered examples of missed equities in 3 of 19 agency samples and inappropriate referrals in 5 of 19 agency samples. ISOO found relatively few examples of improper exemptions, with only 2 of the 19 agencies committing this error. In their observations outside the sample, ISOO found seven agencies not consistently using the Declassification Review Tab (SF 715) and eight making inappropriate referrals. Additionally, seven were not including summary sheets in their boxes to explain their actions, and five were reviewing records during the reporting period that were significantly older than 25 years.

The results of these assessments were recorded, and scores were assigned to the agencies. 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. Of the 19 agencies ISOO assessed, 10 received scores of 90 or above, 6 received scores from 70 to 89, and 3 received scores of 69 and below. ISOO is pleased to report that agencies have shown improvement in their declassification programs since the FY 2008 assessments. The average score increased by nearly 5 percent, and the number of agencies receiving scores of 90 or above increased 17 percent. ISOO will begin publishing agency scores in the FY 2010 annual report.

ISOO will continue to conduct annual assessments and issue notices to agencies in order to provide specific guidance on areas of concern they encounter. ISOO Notices may be found on the ISOO website (http://www.archives.gov/isoo/notices).

Classification Guides

All agencies with original classification authority are required to prepare security classification guides to facilitate the proper and uniform derivative classification of information. Continuing an effort that began in FY 2008 to assess agencies' compliance with the requirement, ISOO requested that agencies provide updated lists of security classification guides, identifying guides by name and/or number and providing the date that each classification guide was issued, as well as the date of the last review and update. Executive branch agencies reported that there were 2,390 guides in use. Only 54 percent of these guides have been updated within the past five years as required. While this is an improvement over the 33 percent compliance rate reported in FY 2008, it nevertheless represents a significant failure by agencies to properly exercise the authority delegated to them by the President. This failure means that a large percentage of guides do not reflect current classification needs and may not adequately protect information that reasonably could be expected to cause damage to the national security. Two large agencies, responsible for 65 percent of the guides in use, reported that only 33 percent of their guides have been updated within the previous five years. Compliance in the other Executive branch agencies collectively stands at 93 percent. With the recent issuance of E.O. 13526, agencies will be required to conduct fundamental classification guidance reviews on a periodic basis. ISOO will continue to work with the agencies to improve overall compliance with these requirements.

Interagency Security Classification Appeals Panel

Authority

Section 5.3 of E.O. 13526, "Classified National Security Information."

Functions

To advise and assist the President in the discharge of his constitutional and discretionary authority to protect the national security of the United States by:

1. deciding on appeals by authorized persons who have filed classification challenges;

2. approving, denying, or amending agency exemptions from automatic declassification; and

3. deciding on appeals by persons or entities who have filed requests for MDR.

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

Support Staff

Information Security Oversight Office

Background

ISCAP was established to perform the functions noted above. 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 of the Central Intelligence Agency (D/CIA); the Archivist of the United States; and the Assistant to the President for National Security Affairs. ISCAP's Chair is selected by the President, the Director of the Information Security Oversight Office serves as Executive Secretary, and ISOO provides staff support.
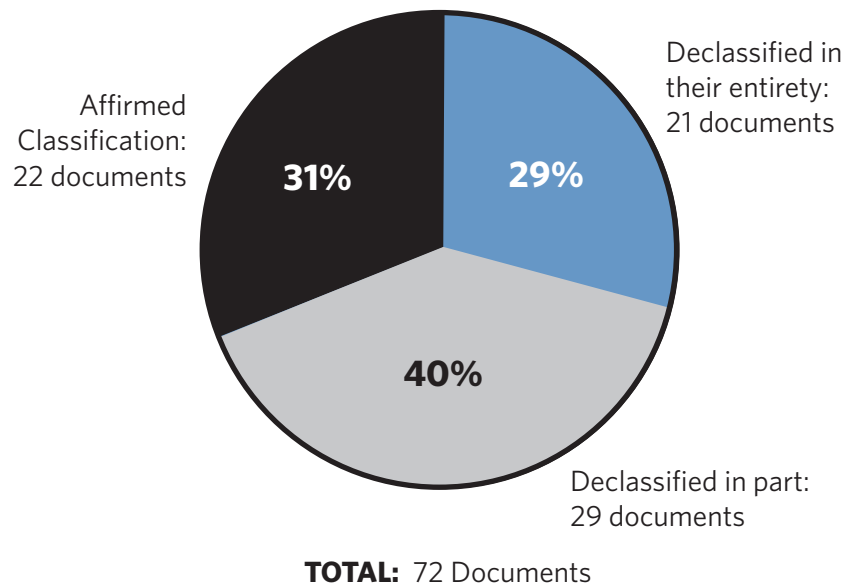
Mandatory Declassification Review Appeals

During FY 2009, ISCAP allocated a majority of its time and resources to processing MDR appeals, finalizing decisions on 72 documents. The Panel declassified additional information in 50 documents (69 percent) and affirmed the prior agency classification decisions in 22 documents (31 percent). Of the 50 documents in which information was declassified, 21 documents (29 percent) were declassified in their entirety and 29 documents (40 percent) had some portions declassified while the classification of other portions was affirmed.

Since May 1996, the Panel has decided upon a total of 841 documents. Of these, ISCAP declassified additional information in 65 percent of the documents. Specifically, 188 documents (22 percent) were declassified in their entirety, and 357 documents (43 percent) had some portions declassified while the classification of other portions was affirmed. During this time, ISCAP fully affirmed the classification decisions of agencies in 296 documents (35 percent). Documents declassified by ISCAP may be requested from the Executive branch agency that has custody of them.

ISCAP Decisions, FY 2009

Affirmed Classification: 22 documents — **31%**

Declassified in their entirety: 21 documents — **29%**

Declassified in part: 29 documents — **40%**

TOTAL: 72 Documents

> . . . 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 requests and appeals within the allowed time frames. As a result, ISCAP has noted a dramatic increase in the number of MDR appeals brought before the Panel due to agency inaction. Agencies must take action, including augmenting staff resources, to ensure appropriate case processing within the allotted timeframes.

MDR is 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 requests and appeals within the allowed time frames. As a result, ISCAP has noted a dramatic increase in the number of MDR appeals brought before the Panel due to agency inaction. Agencies must take action, including augmenting staff resources, to ensure appropriate case processing within the allotted timeframes as specified by section 3.5 of the Order and its implementing directives.

In FY 2004, ISCAP received 35 appeals; in FY 2005, ISCAP received 26 appeals; and in FY 2006, ISCAP received 34 appeals. In FY 2007 and FY 2008, the Panel received 57 and 58 appeals respectively. In FY 2009, the volume of incoming MDR appeals rose to 91 appeals.

If you have any questions concerning ISCAP, please contact the ISCAP staff:
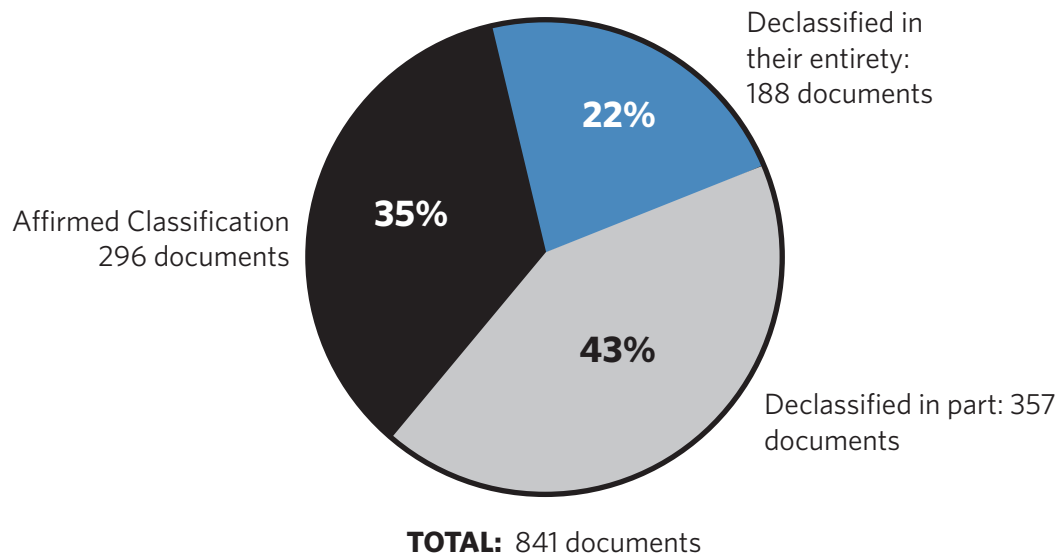
> Telephone: 202.357.5250
> Fax: 202.357.5907
> E-mail: iscap@nara.gov

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

ISCAP Decisions, May 1996 - September 2009

Declassified in
their entirety:
188 documents

22%

Affirmed Classification
296 documents

35%

43%

Declassified in part: 357
documents

TOTAL: 841 documents

National Industrial Security Program

ISOO is responsible for implementing and overseeing the National Industrial Security Program (NISP) under E.O. 12829, as amended, issued in 1993. This oversight responsibility is primarily executed through the National Industrial Security Program Policy Advisory Committee (NISPPAC), a Federal Advisory Committee organized pursuant to section 103 of E.O. 12829, as amended. Membership of the NISPPAC is comprised of both Government and industry representatives, and the NISPPAC is chaired by the Director of ISOO.

The NISPPAC is responsible for recommending changes to industrial security policy, specifically E.O. 12829, as amended, its implementing directive (32 C.F.R. Part 2004), and the National Industrial Security Program Operating Manual (NISPOM). The NISPPAC advises on all matters involving the policies of the NISP and facilitates a discussion forum for policy issues. The NISPPAC convenes at least twice a calendar year at the discretion of the NISPPAC Chair, and the meetings are open to the public in accordance with the Federal Advisory Committee Act.

During FY 2009, three meetings of the NISPPAC were held. The following issues were presented and discussed: personnel security, clearance processing, trust suitability determinations, certification/accreditation of information systems processing classified information, industry access to threat data, and revisions of the NISPOM.

Under the auspices of the NISPPAC, two ad hoc working groups formed during FY 2008 continued to meet on a periodic basis to address NISPPAC action items. A third ad hoc working group, Foreign Ownership Control and Influence (FOCI), was formed during FY 2009 to address specific issues related to FOCI of cleared contractors, licensees, or grantees.

The Personnel Security Clearance ad hoc working group brought together representatives from the Office of Personnel Management, DoD, and industry to review and analyze a comprehensive system of metrics that included key data points to measure the timeliness of clearance processing for industry. The analysis of these metrics resulted in the identification of suggested improvements to the

security clearance process, some of which have been adopted for implementation. A noteworthy accomplishment was the implementation of the Secure Web Fingerprint Transmission (SWFT) system that facilitates the electronic submission of fingerprints in conjunction with the electronic security investigation (eQip) program. The working group also coordinated the establishment of the Clearance Adjudication and Tracking System (CATS) which allows for the coordination of adjudication issues via existing electronic platforms. When fully implemented, SWFT and CATS are expected to cut the processing time for security clearances by at least 10 days.

The Office of the Designated Approval Authority ad hoc working group was renamed the Certification and Accreditation (C&A) working group. The objective of the working group is to bring transparency to the C&A process so that participants understand the requirements and responsibilities for the C&A of information systems. The group continues to develop policy and metrics to measure the timeliness of the C&A

for information systems in order for industry to process classified national security information. The members of the working group include representatives from the Defense Security Service and industry. The group conducted quarterly meetings during the fiscal year and briefed the NISPPAC.

The FOCI ad hoc working group completed two major initiatives in FY 2009. The first was the development of revisions to 32 C.F.R. Part 2004 to delineate the process for conducting national interest determinations. The second was the successful adaptation of DOE's e-FOCI system for implementation across the Executive branch. The intent of the adapted system is to expedite complex FOCI adjudications.

The ad hoc working groups enhance the NISPPAC by gathering empirical data and developing process improvements to produce effective results for the program as a whole. The continuing work of the groups is reported at NISPPAC meetings. Information on the NISPPAC is available on the ISOO website (**http://www.archives.gov/isoo/ oversight-groups/nisppac**).

Acronyms and Abbreviations

Air Force:	Department of the Air Force
Army:	Department of the Army
C&A:	certification and accreditation
CATS:	Clearance Adjudication and Tracking System
CIA:	Central Intelligence Agency
D/CIA:	Director of the Central Intelligence Agency
DHS:	Department of Homeland Security
DNI:	Director of National Intelligence
DoD:	Department of Defense
DOE:	Department of Energy
E.O.:	Executive Order
FOCI:	Foreign Ownership Control and Influence
FOIA:	Freedom of Information Act
FY:	Fiscal Year
ISCAP:	Interagency Security Classification Appeals Panel

ISOO:	Information Security Oversight Office
MDR:	mandatory declassification review
NARA:	National Archives and Records Administration
Navy:	Department of the Navy
NISP:	National Industrial Security Program
NISPOM:	National Industrial Security Program Operating Manual
NISPPAC:	National Industrial Security Program Policy Advisory Committee
NSC:	National Security Council
OCA:	original classification authority
PIDB:	Public Interest Declassification Board
SF:	Standard Form
SWFT:	Secure Web Fingerprint Transmission

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