

The National Security Archive

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February 17, 2006

J. William Leonard
Director
Information Security Oversight Office
National Archives and Records Administration
700 Pennsylvania Avenue, NW, Room 500
Washington, DC 20408

Dear Mr. Leonard:

The undersigned individuals and organizations are committed to principles of transparency that ensure access to important materials that can be used to accurately recount and analyze the historical role of the United States in world affairs. Many of us conduct independent historical research on United States' foreign policy using records available at government archives.

We are writing to alert the Information Security Oversight Office (ISOO) to a major reclassification program that has been conducted in secret and has led to the withdrawal of approximately 9,500 historical documents (55,500 pages) – many of which have been reviewed, duplicated, disseminated, and published in print, microfiche and electronic publications (including in the Foreign Relations of the United States (FRUS) series) – from the open shelves at the National Archives and Records Administration (NARA). Because ISOO is charged with overseeing the security classification system, we are writing to request that ISOO audit this reclassification effort and publicly report on its findings.

Background:

Over the last several years a number of researchers have gone to NARA and requested files only to be told that those records were undergoing re-review and would not be available for an undetermined time period. Although researchers have been aware of the re-review of released records mandated by the Kyl-Lott legislation for restricted Department of Energy information, *see* National Defense Authorization Act for Fiscal Year 1999 (PL 105-261), the files being pulled for re-review were not likely to contain such information. They included items such as: intelligence analyses of the Korean War, the production of National Intelligence Estimates, Communism in Mexico during the 1960s, Political Affairs in Mexico during the 1960s, and Treasury Department Boxes from the 1960s-1972 containing files from the Office of the Assistant Secretary for International Affairs. Researchers also have been aware that some records were re-reviewed after the September 11 attacks under a program designed to ensure no records were available that could aid terrorists,¹ but it seemed unlikely to researchers that such a re-review would include records as old as 1948. Gradually, researchers began to find that records reviewed or duplicated during the course of research over the last 15 to 20 years have now been removed and replaced with generic withdrawal sheets.

¹ See <http://www.archives.gov/research/notices/access-and-terrorism.html>.

To its credit, when confronted with concrete examples of the withdrawals, NARA acknowledged that a major, undisclosed re-review effort has taken place over the last seven years that is scheduled to be completed within the next year.² NARA's position is that numerous errors were made in the effort to declassify historical information during the early days of implementing Executive Order 12958, and that the withdrawals represent the correction of inadvertent releases rather than reclassification. The scale of the re-review effort is staggering and likely has cost taxpayers a significant amount of money. According to NARA, 43.4 million pages of records were surveyed, 6.1 million pages were audited with a page-by-page review, and 9,500 documents (55,500 pages) were withdrawn from NARA's open shelves.

NARA has confirmed that some of the withdrawn documents have been publicly available for up to 15 years and that the withdrawals have included records that have been published in the FRUS series or in microfilm sets marketed by a private distributor, records published and excerpted by historians and analysts in various media, and an untold number of records that reside in the files of the thousands of researchers who have visited NARA over the years.

Apparent Improper Reclassification of Widely Disseminated, Historical Records:

Given the historical nature of the records at issue, their lengthy public availability, and the tremendous scale of the effort, the re-review itself should only have been conducted under clear and transparent standards. In this case, no standards have been made available to the public. Even more troubling, however, the records that we have been able to identify as re-reviewed and withdrawn include records that do not appear properly subject to classification. Moreover, in some cases, they have been published and widely disseminated. Attached to this letter is a set of 15 examples of 50- or more-year old records that have been withdrawn from NARA's open shelves since 2001. Review of these records suggests that they do not meet the standards for classification under the current Executive Order on Classification, even aside from their significant age (and status as being subject to automatic declassification). A number of the records already have been redacted to protect sensitive information and eight of the records have been published either in FRUS, in microfilm supplements to FRUS, or on the CIA's released records database (CREST). The examples of published documents whose file copies have been withdrawn from open collections at NARA casts serious doubt upon the judgment of the reviewers who carried out the reclassification program we have described. Plainly ISOO needs to work with the agencies to develop more appropriate and realistic guidelines for the declassification review of historical documents.

As you know, E.O. 12958, as amended by E.O. 13292, sets forth rigorous standards for reclassification of previously released records. Those include the requirement that the reclassification be taken under the personal authority of the agency head or deputy head, after a written determination that it is necessary, that the information be reasonably recoverable, and that the reclassification be promptly reported to the Director of the Information Security Oversight Office. E.O. 12958 Sec. 1.7(c)(1)-(3). To our knowledge, none of these conditions have been met.

Accordingly, we request that ISOO exercise its authority to supervise security classification and audit the 9,500 records withdrawn to determine whether they are properly subject to classification, particularly in light of their age, length of public availability, actual dissemination in publications or to researchers, and the impossibility of recovering all copies. We further ask that ISOO issue an unclassified and publicly available report on its findings, including guidance on the proper course of action for

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NARA has indicated that this secret re-review is separate from the congressionally mandated Kyl-Lott re-review.

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agencies and NARA in these circumstances, within six months. The public reports made under the Kyl-Lott review program offer a useful example of the type of information that would help Congress and the public to understand what is happening under the secret reclassification program. In addition, records withdrawn from the open shelves should be returned with limited redactions where truly necessary to protect sensitive agency equities.

The undersigned individuals and organizations would be happy to meet with you to discuss our concerns. Thank you in advance for your consideration.

Sincerely,

Matthew Aid, Independent Researcher
Thomas Blanton and Meredith Fuchs, The National Security Archive
Adina Rosenbaum, The Public Citizen Litigation Group
R. Bruce Craig, The National Coalition for History
Randall Woods, President, The Society of Historians of American
Foreign Relations

cc: The Honorable Pat Roberts, Chair The Honorable Peter Hoekstra, Chair
 Senate Select Committee on Intelligence House Permanent Select Committee on Intelligence

 The Honorable John D. Rockefeller, IV The Honorable Jane Harman
 Ranking Member Ranking Member
 Senate Select Committee on Intelligence House Permanent Select Committee on Intelligence

 Allan Weinstein, Archivist
 National Archives and Records Administration