

Central Intelligence Agency

§ 1908.01

simple majority of the total membership is present. Issues shall be decided by a majority of the members present. In all cases of a divided vote, before the decision of the ARP becomes final, any member of the ARP may by written memorandum to the ES/ARP, refer such matters to the Director, Information Management Services (D/IMS) for decision. In the event of a disagreement with any decision by D/IMS related to the classification challenge, Directorate heads may appeal to the Associate Deputy Director, CIA (ADD) for resolution. The final Agency decision shall reflect the vote of the ARP, unless changed by the D/IMS or the ADD.

(d) The ES/ARP shall promptly provide the challenger with written notice of the final Agency decision and, if the appeal is denied, inform the challenger of the right to appeal to the ISCAP through C/CMCG, who will forward the appeal to the ISCAP.

[76 FR 59032, Sept. 23, 2011]

§ 1907.26 Prohibition on adverse action.

Agency correspondence to the challenger shall include a notice that CIA will take no adverse action or retribution against the challenger for bringing the classification challenge in good faith.

[76 FR 59032, Sept. 23, 2011]

RIGHT OF APPEAL

§ 1907.31 Right of appeal.

A right of appeal may be available to the ISCAP established pursuant to section 5.3 of the Order. Action by that body will be the subject of rules to be promulgated by the Information Security Oversight Office.

[76 FR 59032, Sept. 23, 2011]

PART 1908—PUBLIC REQUESTS FOR MANDATORY DECLASSIFICATION REVIEW OF CLASSIFIED INFORMATION PURSUANT TO SEC. 3.5 OF EXECUTIVE ORDER 13526

GENERAL

Sec.
1908.01 Authority and purpose.

- 1908.02 Definitions.
- 1908.03 Contact for general information and requests.
- 1908.04 Suggestions and complaints.

FILING OF MANDATORY DECLASSIFICATION REVIEW (MDR) REQUESTS

- 1908.11 Preliminary information.
- 1908.12 Exceptions.
- 1908.13 Fees.
- 1908.14 Fees.

AGENCY ACTION ON MDR REQUESTS

- 1908.21 Receipt, recording, and tasking.
- 1908.22 [Reserved]
- 1908.23 Determination by originator or interested party.
- 1908.24 [Reserved]

AGENCY ACTION ON MDR APPEALS

- 1908.31 Requirements as to time and form.
- 1908.32 Receipt, recording, and tasking.
- 1908.33 Determination by Deputy Director(s).
- 1908.34 Establishment of appeals structure.
- 1908.35 [Reserved]
- 1908.36 Notification of decision and right of further appeal.

FURTHER APPEALS

- 1908.41 Right of further appeal.

AUTHORITY: Executive Order 13526 75 FR 707, 3 CFR 2010 Comp., p. 298-327 (or successor orders).

SOURCE: 62 FR 32495, June 16, 1997, unless otherwise noted.

GENERAL

§ 1908.01 Authority and purpose.

(a) *Authority:* This part is issued under the authority of and in order to implement section 3.5 of E.O. 13526 (or successor Orders); the CIA Information Act of 1984), as amended (50 U.S.C. 431; section 102 of the National Security Act of 1947, as amended (50 U.S.C. 403); and section 6 of the CIA Act of 1949, as amended (5 U.S.C. 403g).

(b) *Purpose:* This part prescribes procedures, subject to limitations set forth below, for members of the public to request a declassification review of information classified under the Executive Order 13526 or predecessor Orders. Section 3.5 of Executive Order 13526 and these regulations are not intended to and do not create any right or benefit, substantive or procedural, enforceable at law by a party against the United

§ 1908.02

32 CFR Ch. XIX (7–1–20 Edition)

States, its agencies, officers, employees, or agents, or any other person.

[76 FR 59033, Sept. 23, 2011]

§ 1908.02 Definitions.

For purposes of this part, the following terms have the meanings as indicated:

(a) *Agency* or *CIA* means the United States Central Intelligence Agency acting through the CIA Information and Privacy Coordinator;

(b) *Days* means calendar days when the Agency is operating and specifically excludes Saturdays, Sundays, and legal public holidays. Three (3) days may be added to any time limit imposed on a requester by this part if responding by U.S. domestic mail; ten (10) days may be added if responding by international mail;

(c) *Control* means ownership or the authority of the CIA pursuant to Federal statute or privilege to regulate official or public access to records;

(d) *Coordinator* means the CIA Information and Privacy Coordinator who serves as the Agency manager of the information review and release program instituted under the mandatory declassification review provisions of Executive Order 13526;

(e) *Federal agency* means any executive department, military department, or other establishment or entity included in the definition of agency in 5 U.S.C. 552(f);

(f) *Information* means any knowledge that can be communicated or documentary material, regardless of its physical form that is owned by, produced by or for, or under the control of the United States Government; it does not include:

(1) Information within the scope of the CIA Information Act, or

(2) Information originated by the incumbent President, White House Staff, appointed committees, commissions or boards, or any entities within the Executive Office that solely advise and assist the incumbent President;

(g) *Interested party* means any official in the executive, military, congressional, or judicial branches of government, United States or foreign, or U.S. Government contractor who, in the sole discretion of the CIA, has a subject

matter or physical interest in the documents or information at issue;

(h) *NARA* means the National Archives and Records Administration;

(i) *Originator* means the CIA officer who originated the information at issue, or successor in office, or a CIA officer who has been delegated declassification authority for the information at issue in accordance with the provisions of this Order;

(j) *Presidential libraries* means the libraries or collection authorities established by statute to house the papers of former Presidents Hoover, Roosevelt, Truman, Eisenhower, Kennedy, Nixon, Ford, Carter, Reagan, Bush and similar institutions or authorities as may be established in the future;

(k) *Referral* means coordination with or transfer of action to an interested party;

(l) *The Order* means Executive Order 13526 of December 29, 2009 and published at 75 FR 707 (or successor Orders);

(m) *Agency Release Panel (ARP)* refers to the Agency's forum for reviewing information review and release policy, the adequacy of resources available to all Agency declassification and release programs, and hearing appeals in accordance with this section.

[62 FR 32495, June 16, 1997, as amended at 76 FR 59033, Sept. 23, 2011]

§ 1908.03 Contact for general information and requests.

For general information on this part or to request a declassification review, please direct your communication to the Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505. Such inquiries will also be accepted by facsimile at (703) 613-3007. For general or status information only, the telephone number is (703) 613-1287. Collect calls cannot be accepted.

§ 1908.04 Suggestions and complaints.

The Agency welcomes suggestions, comments, or complaints with regard to its administration of the mandatory declassification review program established under Executive Order 13526. Members of the public shall address such communications to the CIA Information and Privacy Coordinator. The

Central Intelligence Agency

§ 1908.21

Agency will respond as determined feasible and appropriate under the circumstances.

FILING OF MANDATORY DECLASSIFICATION REVIEW (MDR) REQUESTS

§ 1908.11 Preliminary information.

Members of the public shall address all communications to the point of contact specified above and clearly delineate the communication as a request under this regulation. Requests and appeals on requests received from members of the public who owe outstanding fees for information services under this Order or the Freedom of Information Act at this or another federal agency will not be accepted until such debts are resolved.

§ 1908.12 Exceptions.

Mandatory Declassification Review requests will not be accepted from an individual who is not a citizen of the United States or an alien lawfully admitted for permanent residence, nor from a foreign government entity or any representative thereof. Declassification review requests will not be accepted for documents required to be submitted for prepublication review or other administrative process pursuant to an approved nondisclosure agreement; for information that is the subject of pending litigation; nor for any document or material containing information contained within an operational file exempted from search and review, publication, and disclosure under the Freedom of Information Act. If the Agency has reviewed the requested information for declassification within the past two years, the Agency will not conduct another review, but the Coordinator will notify requester of this fact, the prior review decision, and of applicable appeal rights pursuant to section 3.5(e) of the Order.

[76 FR 59033, Sept. 23, 2011]

§ 1908.13 Requirements as to form.

The request shall describe the document or material containing the information with sufficient specificity to

enable the Agency to locate it with a reasonable amount of effort.

[76 FR 59033, Sept. 23, 2011]

§ 1908.14 Fees.

(a) *Form of payment.* Fees may be paid in cash, by a check drawn on or money order made payable to the Treasurer of the United States.

(b) *Reproduction fees.* Requesters submitting requests via NARA or the various Presidential libraries or making requests directly to this Agency shall be responsible for reproduction costs as follows: Fifty cents per page and \$10.00 per CD. There is a minimum fee of \$15.00 per request for reproductions.

(c) *Search and review fees.* Requesters making requests directly to this agency also shall be liable for search and review fees as follows.

(d) *Search fees.* Applicable fees will be due even if our search locates no responsive information or some or all of the responsive information must be withheld under applicable authority.

(e) *Computer searching.* (1) Clerical/Technical—\$20.00 per hour (or fraction thereof).

(2) Professional/Supervisory—\$40.00 per hour (or fraction thereof).

(3) Manager/Senior Professional—\$72.00 per hour (or fraction thereof).

(f) *Manual searching.* (1) Clerical/Technical—\$20.00 per hour (or fraction thereof).

(2) Professional/Supervisory—\$40.00 per hour (or fraction thereof).

(3) Manager/Senior Professional—\$72.00 per hour (or fraction thereof).

(g) *Document review.* (1) Professional/Supervisory—\$40.00 per hour (or fraction thereof).

(2) Manager/Senior Professional—\$72.00 per hour (or fraction thereof).

(3) CIA will not charge review fees for time spent resolving general legal or policy issues regarding the responsive information.

[76 FR 59033, Sept. 23, 2011]

§ 1908.21 Receipt, recording, and tasking.

The Information and Privacy Coordinator shall within ten (10) days record each mandatory declassification review request received under this part, acknowledge receipt to the requester in

§ 1908.22

writing (if received directly from a requester), and shall thereafter task the originator and other interested parties. Additional taskings, as required during the review process, shall be accomplished within ten (10) days of notification.

§ 1908.22 [Reserved]

§ 1908.23 Determination by originator or interested party.

(a) *In general.* The originator of the classified information (document) is a required party to any mandatory declassification review request; other interested parties may become involved through a referral by the Coordinator when it is determined that some or all of the information is also within their official cognizance.

(b) *Required determinations:* These parties shall respond in writing to the Coordinator with a finding as to the classified status of the information, including the category of protected information as set forth in section 1.4 of the Order, and, if older than ten years, the basis for the extension of classification time under sections 1.5 and 3.3 of the Order. These parties shall also indicate whether withholding is otherwise authorized and warranted in accordance with sections 3.5(c) and 6.2(d) of the Order.

(c) *Time.* This response shall be provided expeditiously on a “first-in, first-out” basis taking into account the business requirements of the originator or interested parties and consistent with the information rights of members of the general public under the Freedom of Information Act and the Privacy Act.

[62 FR 32495, June 16, 1997, as amended at 76 FR 59034, Sept. 23, 2011]

§ 1908.24 [Reserved]

§ 1908.31 Requirements as to time and form.

Appeals of decisions must be received by the Coordinator within forty-five (45) days of the date of mailing of the Agency’s initial decision. It shall identify with specificity the documents or information to be considered on appeal and it may, but need not, provide a factual or legal basis for the appeal.

32 CFR Ch. XIX (7–1–20 Edition)

§ 1908.32 Receipt, recording, and tasking.

The Coordinator shall promptly record each appeal received under this part, acknowledge receipt to the requester, and task the originator and other interested parties. Additional taskings, as required during the review process, shall be accomplished within ten (10) days of notification.

§ 1908.33 Designation of authority to hear appeals.

(a) *Appeals:* Appeals of initial denial decisions under the Mandatory Declassification Request provisions of Executive Order 13526 shall be reviewed by the Agency Release Panel, which shall issue the final Agency decision.

(b) *Membership:* The Agency Release Panel (ARP) is chaired by the Chief, Information Review and Release Group and composed of the Information Review Officers from the various Directorates and the Director, Central Intelligence Agency area, as well as the representatives of the various release programs and offices. The Information and Privacy Coordinator also serves as Executive Secretary of the ARP.

(c) *Decisions:* The ARP shall meet on a regular schedule and may take action when a simple majority of the total membership is present. Issues shall be decided by a majority of the members present. Any member of the ARP disagreeing with the results of a vote may appeal the decision in writing to the Director, Information Management Services (D/IMS). The appeal shall set forth clearly and concisely the reasons D/IMS should reverse the ARP’s decision. Upon receiving the written appeal, D/IMS shall have ten business days to affirm or reverse, in writing the APR’s decision and shall so notify the appellant. In the event of a disagreement with any declassification and release decision by D/IMS, Directorate heads may appeal to the Associate Deputy Director of CIA (ADD) for resolution. The final Agency decision shall reflect the vote of the ARP, unless changed by the D/IMS or the ADD.

[76 FR 59034, Sept. 23, 2011]

Central Intelligence Agency

§ 1908.41

§ 1908.34 Establishment of appeals structure.

(a) *In general.* Two administrative entities have been established by the Director of Central Intelligence to facilitate the processing of administrative appeals under the mandatory declassification review provisions of this Order. Their membership, authority, and rules of procedure are as follows.

(b) *Historical Records Policy Board (“HRPB” or “Board”).* This Board, the successor to the CIA Information Review Committee, acts as the senior corporate board in the CIA on all matters of information review and release. It is composed of the Executive Director, who serves as its Chair, the Deputy Director for Administration, the Deputy Director for Intelligence, the Deputy Director for Operations, the Deputy Director for Science and Technology, the General Counsel, the Director of Congressional Affairs, the Director of the Public Affairs Staff, the Director, Center for the Study of Intelligence, and the Associate Deputy Director for Administration/Information Services, or their designees. The Board, by majority vote, may delegate to one or more of its members the authority to act on any appeal or other matter or authorize the Chair to delegate such authority, as long as such delegation is not to the same individual or body who made the initial denial. The Executive Secretary of the HRPB is the Director, Information Management. The Chair may request interested parties to participate when special equities or expertise are involved.

(c) *Agency Release Panel (“ARP” or “Panel”).* The HRPB, pursuant to its delegation of authority, has established a subordinate Agency Release Panel. This Panel is composed of the Director, Information Management, who serves as its Chair; the Information Review Officers from the Directorates of Administration, Intelligence, Operations, Science and Technology, and the Director of Central Intelligence Area; the CIA Information and Privacy Coordinator; the Chief, Historical Review Group; the Chair, Publications Review Board; the Chief, Records Declassification Program; and representatives from the Offices of General Counsel and Congressional Af-

fairs, and the Public Affairs Staff. The Information and Privacy Coordinator also serves as the Executive Secretary of the Panel. The Panel advises and assists the HRPB on all information release issues, monitors the adequacy and timeliness of Agency releases, sets component search and review priorities, reviews adequacy of resources available to and planning for all Agency release programs, and performs such other functions as deemed necessary by the Board. The Chair may request interested parties to participate when special equities or expertise are involved. The Panel, functioning as a committee of the whole or through individual members, will make final Agency decisions from appeals of initial denial decisions under E.O. 12958. Issues not resolved by the Panel will be referred by the Panel to the HRPB. Matters decided by the Panel or Board will be deemed a final decision by the Agency.

§ 1908.35 [Reserved]

§ 1908.36 Notification of decision and right of further appeal.

The Executive Secretary of the Agency Release Panel shall promptly prepare and communicate the final Agency decision to the requester, NARA, or the particular Presidential Library. That correspondence shall include a notice, if applicable, that an appeal of the decision may be made to the Interagency Security Classification Appeals Panel (ISCAP) established pursuant to section 5.3 of the Order.

[76 FR 59034, Sept. 23, 2011]

FURTHER APPEALS

§ 1908.41 Right of further appeal.

A right of further appeal may be available to the Interagency Security Classification Appeals Panel established pursuant to section 5.3 of the Order. Action by that Panel will be the subject of rules to be promulgated by the Information Security Oversight Office.

[76 FR 59034, Sept. 23, 2011]