

NATIONAL SECURITY COUNCIL**Procedures for Obtaining Access to National Security Council (NSC) Records**

AGENCY: National Security Council.

ACTION: Notice of NSC Issuance of Access Procedures.

SUMMARY: The NSC is today publishing a Removal of Final Rule in the **Federal Register** that removes the NSC regulations for processing Freedom of Information Act (FOIA) requests for NSC records. Although NSC records are no longer subject to disclosure under the FOIA, a Presidential Memorandum of March 24, 1994, directed the NSC to establish procedures for continued public access to appropriate NSC records.

DATES: These procedures take effect on May 8, 1998.

FOR FURTHER INFORMATION CONTACT: Rod Soubers, 202-456-9201.

Public Access to National Security Council Records*Introduction*

Sec. 1.1 Background

As an organization in the Executive Office of the President that advises and assists the President, the National Security Council (NSC) is not subject to the Freedom of Information Act (FOIA). However, the NSC accepts and processes requests from the public and releases information as appropriate on a discretionary basis.

Sec. 1.2 Purpose

These procedures set forth an orderly process for public access to important national security information, consistent with protecting national security, ensuring the rights of individuals, and promoting open and effective government.

Requests From the Public for Records

Sec. 2.1 Access Policy

a. The NSC will review for release: (1) certain records of the current administration: namely, those internal records created by and transmitted exclusively among NSC staff members as well as all communications sent or received from outside the Executive Office of the President; and (2) records remaining in NSC custody from past Presidential administrations.

b. Because of the NSC's statutory role in advising and assisting the President with respect to national security issues, many of the records maintained by the NSC are extremely sensitive; most are classified under Executive Order 12958

or predecessor orders. Consequently, a main emphasis of the NSC staff in reviewing records for release to the public is assuring that sensitive national security information remains protected as records are released. In releasing documents, the NSC will follow generally accepted access principles, such as those articulated in FOIA case law.

c. Records of the current administration are not subject to the mandatory review provisions of Executive Order 12958. However, all requests for classified records not otherwise restricted will be processed in a manner consistent with the mandatory review provisions of Executive Order 12958, or its successor.

d. A record, or portion thereof, may be exempted from release only if it contains information within one or more of the following categories:

1. Information that is specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and is in fact properly classified pursuant to such Executive Order.

2. Information relating to appointments to Federal office or entirely to the internal practices of the NSC, including formats maintained in confidence to authenticate internal issuances.

3. Information that is specifically exempted from disclosure by statute.

4. Trade secrets and commercial or financial information obtained from a person and privileged or confidential.

5. Communications requesting or submitting advice, or any other privileged communications, between presidential advisers, including NSC staff, or between NSC staff and other government officials.

6. Personnel files and similar information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

7. Information compiled for law enforcement purposes.

Sec. 2.2 Submitting Requests for Records

All requests from the public for records should be addressed to: Director, Access Management, National Security Council, Washington, D.C. 20504. Requests for records must be sufficiently specific to enable the NSC staff to locate the record with a reasonable amount of effort. When a request does not reasonably and specifically describe the record sought, the NSC staff will notify the requester that no further action will be taken until

additional information is provided, or the scope of the request is narrowed.

Sec. 2.3 Processing Requests for Records

a. The NSC staff will process and answer all requests, including conducting searches for responsive records, providing copies of all releasable records, providing a negative reply if no responsive records are located, and providing a reason for withholding of any record or portion thereof.

b. Public requests to the NSC are generally handled on a "first-in/first-out" basis. The Access Management Staff will maintain a queue of requests and will service each request in turn. In the interest of economy and efficiency the staff may establish separate queues for requests of different degrees of difficulty.

c. There are three routine procedural exceptions to this "first-in/first-out" policy: (1) when it is readily apparent that requested documents have been previously declassified and released, the request is answered without regard to its position in the queue; (2) when a new document request is identical to or involves part of a previous but still pending document request (i.e., no additional research is required), the new request is processed along with the pending request; and (3) when the processing of a particular request requires coordination with agencies of subject matter interest, a response cannot be provided to a requester until the coordination is complete.

d. Exceptions to the "first-in/first-out" policy may also be made in order to hasten response to (1) requests that may affect the personal safety of an individual or (2) requests that are of broad and pressing public interest.

e. In order to assure equitable access to records by all members of the requesting public, initial production of documents in response to any single request, at the discretion of the Access Management staff, may be limited to what can reasonably be retrieved without burdensome effort. After the initial production of documents the request will be placed at the end of the queue to await further action in turn after other waiting requesters have been served.

f. After any materials responsive to a particular public request are collected, they are reviewed for declassification and release. In reviewing documents for declassification, the Access Management staff often seeks the subject matter expertise of interested Federal agencies. This expertise is obtained through the referral of copies of

responsive documents to appropriate agencies for review and recommendation or through consultation.

g. Copies of responsive documents that were originated by a Federal agency but located among NSC files may be referred to the originating agency for a release determination and direct response by the agency to the requester.

h. In light of the NSC's official recordkeeping practices, records normally will be made available in paper form. Exceptions to this policy will be made where electronic versions of records exist in an accessible form, and it is feasible for the NSC to provide public access to records in that form.

Sec. 2.4 Requests for Reconsideration

a. Requests for reconsideration of decisions not to release requested documents, or portions thereof, should be addressed to the Executive Secretary, National Security Council, Washington, D.C. 20504, within sixty (60) days from the date the requester receives written notification of the denial. This appeal process does not include reconsideration of notifications that no responsive documents were located in a search of NSC files.

b. Requests for reconsideration will be placed in a separate queue to be acted on in turn. The Access Management staff will process such requests as expeditiously as possible.

Sec. 2.5 Availability of Released Records

Upon release to an individual requester, NSC numbered policy documents are also deposited with the National Archives and Records Administration for general public reference.

Sec. 2.6 Fee Schedule

The NSC reserves the right to establish a fee schedule for the search and reproduction of information available under this public access policy.

Glyn Davies,

Executive Secretary.

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