

FREEDOM OF INFORMATION ACT

Release of Requests For Classified Records

You have requested guidance concerning the release of historical records that are marked classified, such as SECRET, under the Freedom of Information Act (FOIA).

Under DoD 5400.7-R_AFMAN 33-302, *Freedom of Information Act Program*, requests for classified records are not automatically denied under the FOIA exemption for withholding classified records, exemption (b)(1). 5 U.S.C. §552(b)(1). Rather, only information that is “currently” and “properly” classified under the appropriate executive order dealing with the classification of information - in this case as of today Executive Order (EO) 13526 - may be withheld from FOIA release under FOIA exemption (b)(1). Accordingly, the requested record must be reviewed by appropriate subject matter expert/appropriate classification authority for continued classification, in accordance with Executive Order 13526 and the review procedures of DoD 5400.7_R_AFMAN 33-302. After review, all unclassified information is releasable to the requester, subject, of course, to the application of any other FOIA exemption.

Legal reviews concerning the release of documents that have previously been classified should address the following issues: (1) a showing by the classification authority that the classified information, if released, would harm the national security of the United States, as defined in EO 13526; (2) confirmation that the correct section of the EO is being cited for continued classification of information contained in the document. For records under 25 years, paragraph 1.4 and its subparagraphs is the appropriate paragraph that authorizes the classification of certain types of information. For records that are 25 years or older, paragraph 3.3 and one of its subparts must be cited; (3) confirmation that the information that is being withheld relates to the subject matter of the type of information under either section 1.4 or 3.3 that the EO allows to be classified; and (4) consistency. Legal reviews should ensure that information that is proposed to be released is not similar or identical to other information in the document that is proposed to be released as unclassified.

Once the proper review has been completed, courts give great deference to the classifiers (classification authority) decision as to what information should continue to be withheld under FOIA exemption (b)(1).