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Memorandum for: Senior Agency Officials for Controlled Unclassified Information (CUI)

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Subject: Decontrolling Controlled Unclassified Information (CUI) in response to a Freedom of Information Act (FOIA) request

Reference: 32 CFR 2002, Controlled Unclassified Information (September 14, 2016); and Executive Order 13556, Controlled Unclassified Information (November 10, 2010).

This memorandum provides guidance to agencies regarding the release and decontrol of CUI in response to a FOIA request.

The fact that an agency designates certain information as CUI does not control the agency's determination pursuant to any law that requires the agency to disclose that information or permits it to do so as a matter of discretion. The agency must make such determinations according to the criteria set out in the governing law, not on the basis of the information's status as CUI.

Agencies must not cite the FOIA as a CUI safeguarding or disseminating control authority for CUI.

When an agency is determining whether to disclose information in response to a FOIA request, the agency must base its decision on the content of the information and the applicability of any FOIA statutory exemptions at the time the disclosure determination is being made, regardless of whether the agency has previously designated or marked the information as CUI.

As a general matter, when an agency releases information in response to a FOIA request – which by definition is a public disclosure – such information can no longer be protected as CUI and is essentially decontrolled by the agency.

In the event an agency believes that notwithstanding the public disclosure of the information through the FOIA, there is still an identifiable need to continue to protect it as CUI within the agency, further consultations are required. In such a situation, agencies should consult with their legal counsel and, to the extent appropriate, ISOO and/or the Office of Information Policy at the Justice Department, to ensure that there is a legal and policy basis to continue to protect CUI information that has been publicly released.