

June 1, 2017

# ISCAP APPELLANTS FORUM

The ISCAP Staff  
iscap@nara.gov

# What is the ISCAP?

- Interagency Security Classification Appeals Panel
- Created by President Clinton in Executive Order 12958, “Classified National Security Information,” in 1995
- The ISCAP provides the public and users of the classification system with a forum for further review of classification decisions
- Four functions:
  - Decide on appeals for classification challenges
  - Approve exemptions to declassification at 25, 50, and 75 years: declassification guides
  - Decide on mandatory declassification review (MDR) appeals
  - Inform senior agency officials and the public of its decisions
- The Director of the Information Security Oversight Office (ISOO) is the Executive Secretary; ISOO provides the ISCAP Staff

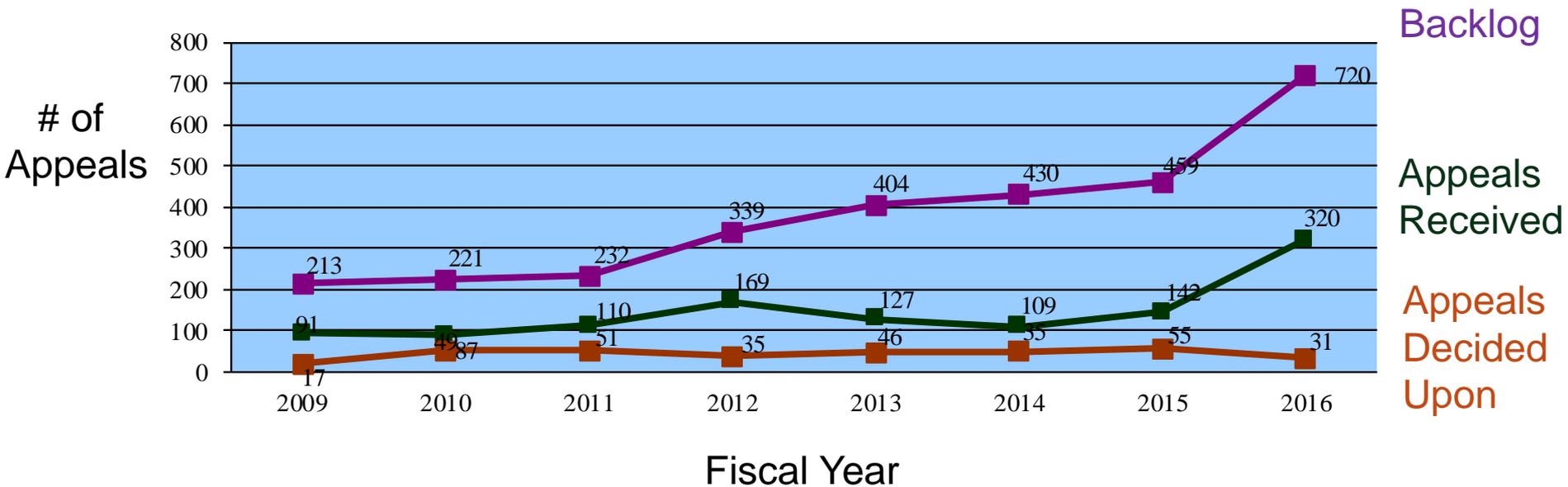
# Membership of the ISCAP

- **National Security Council:**
  - John Fitzpatrick, Senior Director, Records Access and Information Security Management (Chair)
- **Department of Defense:**
  - Garry P. Reid, Director for Defense Intelligence, Office of the Deputy Under Secretary of Defense for Intelligence and Security
- **Department of Justice:**
  - Lionel Kennedy, Office of Law and Policy, National Security Division
- **Department of State:**
  - Amb. Larry Palmer, Deputy Assistant Secretary for Global Information Services
- **National Archives and Records Administration**
  - Sheryl Shenberger, Director, National Declassification Center
- **Office of the Director of National Intelligence**
  - [Jennifer Hudson], Chief, Information and Data Management Group
- **Central Intelligence Agency (for discussions regarding CIA information only)**
  - [Joseph Lambert], Director, Information Management Services

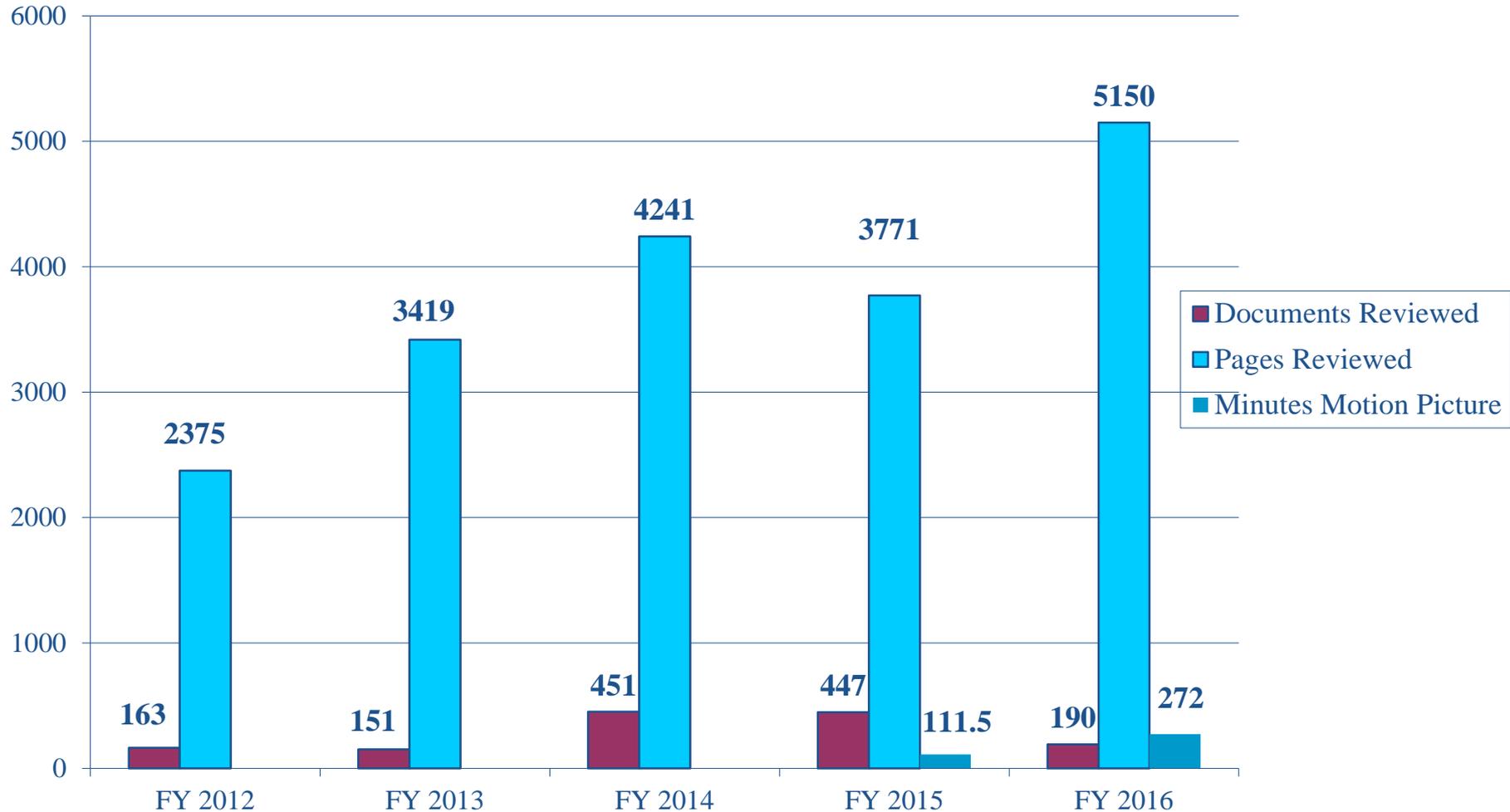
# MDR Appeals to the ISCAP

- Mandatory Declassification Review (MDR) requests may be appealed to the ISCAP after the agency has made an appeal decision *or if the requester did not receive a response after one year or a response to an appeal after 180 days*
  - Agencies must continue to process MDR requests that have been appealed to the ISCAP due to the expiration of a response deadline: See ISOO Notice 2013-03
- Received in FY 2016: 320 appeals (a new record)
- Decided in FY 2016: 31 MDR appeals
  - 190 documents
  - 5150 pages (a new record)
  - 272 minutes of motion picture film (a new record)

# ISCAP Appeals, FY 2009-2016



# Comparison of ISCAP Activity



# Appeal Analysis: FY 2016 Incoming

- Of the 320 appeals received in FY 2016:
  - **226 (71%)** were due to the appellant not receiving a response within one year of the initial request (18% in FY 2015, 24% in FY 2014)
  - **7 (2%)** were due to the appellant not receiving an agency level appellate decision within 180 days of filing an appeal (5% in FY 2015, 6% in FY 2014)
  - **31 (10%)** originated with the National Security Archive researchers William Burr, Nathan Jones and Lauren Harper (31% in FY 2015, 31% in FY 2014)
  - **22 (6%)** originated with Peter Pesavento (18% in FY 2015, 9% in FY 2014)
  - **168 (53%)** originated with Allen G. Johnson (69), Lawrence Peterkin (52) and Mary Sarotte (47)
  - **26 (8%)** incoming appeals were administratively closed (13% in FY 2015, 21% in FY 2014) A total of 30 appeals were administratively closed in FY 2016, including 4 received in previous years.
  - **91 (28%)** are for records at a Presidential Library

# Incoming Appeals: FY 2017

- As of May 24, 2017, the ISCAP has received 493 appeals
- Of these, 35 have already been administratively closed
- Of the 493 appeals received:
  - 26 are from Peter Pesavanto
  - 33 are from William Burr
  - 388 are from Allan G. Johnson
  - 369 are due to the expiration of the one-year decision deadline
  - 45 are due to the expiration of the 180-day agency appeal deadline

# ISCAP Prioritization Process

- **Age of appeal:** The ISCAP is committed to resolving its oldest appeals.
- **Type of appellant:** An appeal from a first-time appellant may be prioritized over another appeal from a frequent appellant.
- **Declassification breakthroughs:** The ISCAP does weigh the relative importance of the content of the requests; an appeal containing an issue not addressed by the ISCAP before may be prioritized over one containing a topic frequently adjudicated.
- **Size and complexity of appeal: Self-prioritization by appellant:** Some appellants inform the ISCAP of their own priorities for their multiple requests; these wishes are taken into account by the ISCAP.
- **Type of appeal:** Classification challenge appeals to the ISCAP are comparatively rare and are prioritized for review when received.

# ISCAP Adjudication Process

- ISCAP Staff distribute briefing books to the Liaisons
- Liaisons discuss the appeals at twice-monthly meetings
  - Consult with specialists within agencies
  - Evaluate in light of related official releases
  - May invite subject matter experts from agencies to participate in discussions
- Decisions on appeals by Members recorded by ISCAP Staff
- 60-day period between decision and release for agency head appeal to President
- Special consideration for certain Presidential records:
  - Nixon: Releases are conducted by the Nixon Library in accordance with the Presidential Recordings and Materials Preservation Act
  - Reagan and forward: Releases are conducted by those libraries in accordance with the Presidential Records Act

- **Decisions:**
  - To inform agency declassification staff and the public
  - Declassified documents only
  - Delay in posting due to the requirement (Section 508 Standards for Electronic and Information Technology) to make information accessible to members of the public with disabilities impacting vision, hearing, color perception, speech, manual dexterity, reach, strength and cognitive, language or learning disabilities.
- **Appeals Log:**
  - All appeals active during the current Presidential administration
  - Updated quarterly
  - Status categories: Materials Requested; Materials Received; Appeal Under Review; Decision Reached; Administratively Closed

# Agency MDR Processing: Volume

- Standards for MDR Request Processing:
  - E.O. 13526, section 3.5(a)(1): “...sufficient specificity to enable the agency to locate it with a reasonable amount of effort.”
  - 32 C.F.R. Part 2001.33(a)(2)(i): “Requests for broad types of information, entire file series of records, or similar non-specific requests may be denied by agencies for processing under this section.”
- Requests may be voluminous and still be valid
- Voluminous requests cause significant delays in processing both for agencies and the ISCAP

# Agency MDR Processing: Referrals

- 32 C.F.R. Part 2001.33(a)(2)(ii):
  - Agencies must refer records originated by another agency to that agency
  - The agency that receives the referral must provide a review determination back to the referring agency
  - The agency that received the initial request manages the request and informs the requester of the review results
- Requests for records containing multiple referrals may be delayed in processing

# Agency-level Appeals

- E.O. 13526, section 3.5(e): Agencies must have a procedure for the adjudication of MDR appeals and for the granting of appeal rights to the ISCAP
- As with initial requests, when processing an internal agency appeal with multiple agency equities, agencies should refer those equities to the appellate authorities at the referral agencies, then collect the responses and provide the final determination to the requester
- All denials are subject to appeal: No records found, Glomar, insufficient specificity

# ISOO Notice 2013-03

- Issued in 2013 and still in effect
- When an agency is informed that an MDR request it is responsible for has been appealed to the ISCAP due to the expiration of a decision deadline:
  - The responsible agency must continue to process the request, including the collection of referral decisions
  - The responsible agency must inform the requester *and the ISCAP Staff* of any further releases
  - The appellant retains appeal rights on any denials
  - The appellant may withdraw the ISCAP appeal

# What's Next for the ISCAP

- Declassification guide review in CY 2017 will reduce MDR productivity
- No expectation of additional resources for ISCAP member agency staffing or ISOO staff support
- The ISCAP will focus on MDR appeals that have completed the agency appeal process
- Preliminary planning for a new executive order to replace E.O. 13526 underway at National Security Council

# ISCAP Contact Information

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