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ISOO Notice 2014-01: Appeal Rights for Mandatory Declassification Review Requests and the Rejection of Requests for Specific Reasons

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The purpose of this notice is to inform Federal agency declassification offices and requesters of the proper steps for granting appeal rights for mandatory declassification review (MDR) requests. This notice also concerns the rejection of MDR requests for selected specific reasons.

Section 3.5(d) of Executive Order 13526, “Classified National Security Information,” (the Order) states, “If an agency has reviewed the requested information for declassification within the past 2 years, the agency need not conduct another review and may instead inform the requester of this fact and the prior review decision and advise the requester of appeal rights provided under subsection (e) of this section.”

Declassification reviews may result either from MDR requests or from Freedom of Information Act (FOIA) requests. MDR appeal rights as required by section 3.5(e) of the Order must be granted to the appropriate level, either to the agency’s MDR appellate body or to the Interagency Security Classification Appeals Panel (ISCAP).

All denials, including rejections for specific reasons described in scenarios 5 through 8 below, are appealable to the agency appellate authority and ultimately to the ISCAP. In all cases, requesters must follow the timelines and requirements contained in agency MDR regulations, the Order and its implementing directive (23 C.F.R. Part 2001), and the ISCAP bylaws (32 C.F.R. Part 2003).

Appeal Rights:

Scenarios for granting appeal rights include:

Scenario 1: A requester files an MDR request for a document reviewed and denied release in full or in part to another MDR requester within the previous two years. The first requester did not appeal the original declassification decision to the agency MDR appellate body.

Agency Response: The agency informs the new requester of the previous decision, and informs the requester of the right to appeal to the agency MDR appellate body.

Scenario 2: A requester files an MDR request for a document reviewed and denied release in full or in part by the agency MDR appellate body within the previous two years.

Agency Response: The agency informs the new requester of the previous appellate decision, and informs the requester of the right to appeal to the ISCAP.

Scenario 3: A requester files an MDR request for a document reviewed and denied release in full or in part to a FOIA requester within the previous two years. The FOIA requester did not appeal the original declassification decision to the agency's appellate body for FOIA. The document contains information withheld from release under the FOIA exemption (b)(1) for classified national security information.

Agency Response: The agency informs the new MDR requester of the previous FOIA decision, and informs the requester of the right to appeal to the agency MDR appellate body for the remaining classified national security information in the document.

Scenario 4: A requester files an MDR request for a document reviewed and denied release in full or in part by the agency appellate body for FOIA within the previous two years. The FOIA decision is not in litigation. The document contains information withheld from release under the FOIA exemption (b)(1) for classified national security information.

Agency Response: The agency informs the new MDR requester of the previous FOIA appellate decision, and informs the requester of the right to appeal to the ISCAP for the remaining classified national security information in the document.

The Rejection of MDR Requests for Specific Reasons:

Selected scenarios for the rejection of MDR requests for specific reasons include:

Scenario 5: A requester files an MDR request for information for which he or she has also filed a FOIA request that is still under review.

Agency Response: The agency asks the requester to choose either MDR or FOIA for the review and release of this information. If the requester does not select one method, the agency rejects the MDR request and responds to the request as a FOIA request (32 C.F.R. Part 2001.33(f)).

Scenario 6: A requester files an MDR request that fails to describe the document or material containing the information with sufficient specificity to enable the agency to locate it with a reasonable amount of effort.

Agency Response: The agency rejects the MDR request (section 3.5(a)(1) of the Order).

Scenario 7: A requester files an MDR request for a document already reviewed and denied release in full or in part to a FOIA requester. The FOIA requester appealed the decision to the agency's appellate body for FOIA and then litigated the denial. The document contains information withheld from release under the FOIA exemption (b)(1) for classified national security information, and the litigation remains in progress in the Federal courts.

Agency Response: The agency informs the MDR requester of the FOIA appellate decision and rejects the MDR request (section 3.5(a)(3) of the Order).

Scenario 8: A requester files an MDR request for records relating to a pre-publication review of an article submitted by an agency employee for review pursuant to a non-disclosure agreement.

Agency Response: The agency rejects the MDR request (section 3.5(g) of the Order).

Please direct any questions regarding this ISOO Notice to: isoo@nara.gov.