

Mandatory Declassification Review Training

*Information Security Oversight Office
National Archives and Records Administration*

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References

Executive Order 13526, “Classified National Security Information,” December 29, 2009

32 CFR Part 2001, “Classified National Security Information,” June 25, 2010

32 CFR Part 2003, “The Interagency Security Classification Appeals Panel (ISCAP) Bylaws, Rules, and Appeal Procedures,” July 9, 2012

What is Mandatory Declassification Review (MDR)?

Mandatory Declassification Review (MDR) is a means by which *any* individual or entity can request any Federal agency to review classified information for declassification, regardless of its age or origin, subject to certain limitations. MDR is another route to the declassification and release of security-classified agency records under the terms of E.O. 13526.

What Information is Subject to MDR?

- *All* information classified under the Order or predecessor orders shall be subject to a review for declassification by the originating agency
- Federal Government agencies' records (i.e. DoD, CIA, FBI)
- Congressional records classified by the executive branch
- Past Presidential administrations
 - "Deed of Gift" libraries: Franklin Roosevelt through Carter, plus Nixon
 - Presidential Records Act libraries: Reagan and all presidents since

What Classified Information is *not* Subject to MDR?

Information originated by:

- The incumbent President or Vice President or their White House staff
 - Committees, commissions, or boards appointed by the incumbent President
 - Other entities within the Executive Office of the President that solely advise and assist the incumbent President
- or
- Information classified under the Atomic Energy Act of 1954 (Restricted Data/Formerly Restricted Data)

How and where does one submit an MDR Request?

- The request must describe the document or material containing the information with **sufficient specificity** to enable the agency to locate it with a **reasonable** amount of effort.
 - The information is not exempted from search and review under certain sections of the National Security Act of 1947 (CIA operations file exemption)
 - The information is not the subject of pending litigation
 - The information has not been reviewed for declassification within the past 2 years
- E.O. 13526, Section 3.5(e) requires agency heads develop procedures to process requests for MDRs. These procedures will differ from agency to agency but the core requirements listed below must be fulfilled by all agencies. Before submitting an MDR to the ISCAP, the requester must fulfill the agency level processes.
- Requests for MDR at the agency level should be addressed to the person(s) or office(s) that each agency has published in the Federal Register. See:

<http://www.archives.gov/isoo/contact/mdr-contact.html>

- The requests must be specific enough to permit agency personnel to locate the records with a “reasonable amount of effort.”

What is a Federal Agency's MDR Responsibility?

- Agency are required to:
 - promptly process MDR requests
 - notify requesters of results
 - provide the means for appeals of within the agency and to the Interagency Security Classification Appeals Panel (ISCAP)
- Agencies *may* establish and publish fee schedules as part of their MDR procedures.
- Agencies are expected to conduct a line by line review of the requested record(s) and declassify information that no longer meets the standards for classification under the Order.
- Agencies are expected to release the requested record(s) in full or in redacted form unless withholding is otherwise authorized and warranted under applicable law.

For Researchers: What to Include in a Request

- An MDR request must be submitted in writing to the agency. Information on where to send MDR requests at each agency can be found on NARA's Information Security Oversight Office's web site: <http://www.archives.gov/isoo/contact/mdr-contact.html>.
- The same person may not file a Freedom of Information Act (FOIA) request concurrently with an MDR request.
- To draft an MDR request:
 - Begin letter by stating, "This is a request for a mandatory declassification review (MDR), under the terms of section 3.5 of E.O. 13526 of the following..."
 - Specifically describe the document(s) being requested. When possible, include a title, date, and document number.
 - Ask that the agency release "all reasonably segregable material."
- Limit the request as much as possible to increase the chances of receiving a timely decision.
- Include contact information, including mailing address, in case agency staff have questions or difficulties locating the document.

For Agencies: Receiving an MDR

- Upon receipt of the MDR request, the agency needs to ensure that the request meets the requirements detailed in 32 CFR 2001.33.
- The agency verifies that the MDR request has sufficient specificity to allow agency personnel to locate the records containing the information sought with a reasonable amount of effort.
- In accordance with 32 CFR 2001.33(a)(2), requests for broad types of information, entire file series of records, or similar non-specific requests may be denied by the agency for processing.
- As soon as possible after receiving the MDR request, the agency should send a letter to the requester acknowledging receipt of the request. The acknowledgement letter should contain a request tracking number and an agency point of contact.
- If the agency has reviewed the information for declassification within the last two years, inform the appellant of the results of the previous decision and of the right to appeal. **See ISOO Notice 2014-01.**

For Agencies: Processing the MDR

- If the classified records cannot be located, the agency will generate a letter to the requester, outlining the search criteria used for the search and informing the requester that no records were recovered.
- A “Glomar” response is possible; see section 3.6(a) of E.O. 13526: “An agency may refuse to confirm or deny the existence or nonexistence of requested records whenever the fact of their existence is itself classified under this order or predecessor orders.”
- All denials—including “no records found” and “Glomar” responses—are subject to appeal, first at the agency appellate level and ultimately to the ISCAP.
- Identify other agency equity for referral.
- Identify classified national security information.
- Identify non-national security information for withholding.

For Agencies: Referrals and Redaction

Referrals:

- The agency that received the request is responsible for handling the coordination of review of the classified equity of other agencies. See 32 CFR 2001.33(a)(ii)

Redaction Process:

- Redact the document unless the overall meaning of the record would be distorted by the redaction
- Consult agency classification guides, ISCAP-approved declassification guide, and subject-matter experts
- Understand previous decisions by the ISCAP: decisions since 2012 are searchable at: <https://www.archives.gov/declassification/iscap/decision-table>
- Identify all redaction portions:
 - Use Section 1.4 of E.O. 13526 for National Security Information (NSI) in records younger than 25 years
 - Use Section 3.3 of E.O. 13526 for National Security Information (NSI) in records older than 25 years
 - Use the name of the specific statute for information protected from disclosure under statute
- See **ISOO Notice 2015-01** for more details

Agency-Level Appeals

- Agencies must establish a process for the appeal of initial decisions provided to requesters, and inform the requesters of this process.
- If a response is appealed, the agency appellate authority should review the original decision and, if applicable, coordinate any necessary other agency equity with that agency's appellate authority.
- The final decision sent to the requester at the conclusion of the agency appellate review must include notification of the right to appeal to the Interagency Security Classification Appeals Panel (ISCAP) within 60 days of the date of the final agency decision.

Appealing Directly to the ISCAP

- Requesters can appeal an MDR request directly to the ISCAP if an agency fails to provide a decision to the initial request after one year.
- Requesters can also appeal an MDR request directly to the ISCAP if an agency fails to provide an appellate decision after 180 days.
- Appellants must pay careful attention to their calendars: they only have a 60-day window after the expiration of those deadlines to appeal to the ISCAP.
- Agencies must continue to process MDR requests that have been appealed to the ISCAP due to the expiration of a deadline. **See ISOO Notice 2013-03:**
 - Continue processing referrals to other agencies.
 - Provide releasable materials to the requester and to the ISCAP Staff.
 - The requester may close the ISCAP appeal.

What is the ISCAP?

- Interagency Security Classification Appeals Panel
- 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 MDR.
 - Decide on appeals for classification challenges.
 - Decide on exemptions from automatic declassification.
Agency declassification guides
File series exemptions
 - Inform senior agency officials and the public of its decisions.
Classification Challenges
MDR Appeals

ISCAP Membership and Administration

- **The ISCAP consists of Senior-Level Representatives from the following agencies:**
 - National Security Staff
 - Department of Defense
 - Department of State
 - Department of Justice
 - Office of the Director of National Intelligence
 - National Archives and Records Administration
 - Central Intelligence Agency as Temporary Representative for CIA information
- The President appoints the ISCAP's Chair from among its members.
- ISCAP Liaisons support Members.
- Director of ISOO serves as Executive Secretary.
- ISOO provides program and administrative staff support.
- ISCAP records are Presidential records.

Process for Appealing a MDR Denial to the ISCAP

- Requests must be in writing and sent via U.S. mail, email, or fax.
- Include copies of all correspondence and relevant supporting materials.
- Provide personal contact information, including mailing address and telephone number.
- Appellants are encouraged to be realistic in their appeals to ISCAP and to limit the number of appeals they bring to the ISCAP.

ISCAP Staff Review

The Executive Secretary, in consultation with the ISCAP staff, makes an initial assessment of the appeal based on the information the appellant has provided. For the ISCAP to consider an appeal, it must meet the following criteria:

- The appellant has previously filed an administrative appeal with the agency.
- The appellant has received the final agency decision denying his or her administrative appeal, or has not received a final decision regarding the administrative appeal within 180 days of its filing, or has not received an initial decision regarding the MDR request within 365 days of its filing.
- There is no action pending in the Federal courts regarding the information in question.
- The information in question has not been the subject of review by the Federal courts or the ISCAP within the past two years.
- The information is not exempted from search and review as an operational file of the Central Intelligence Agency protected by statute.

ISCAP Appeal Adjudication Process

- Staff processes and evaluates incoming appeals.
- Staff requests responsive materials from agencies.
- Staff prioritizes appeals and creates briefing books.
- Staff distributes briefing books to the Liaisons.
- Liaisons discuss the appeals at twice-monthly meetings.
- Decisions on appeals by Members recorded by ISCAP Staff.
- 60-day period between decision and release for agency head appeal to President.
- Releases conducted by ISCAP staff and posted on website.

MDR vs FOIA

What are the Advantages to filing a MDR over a FOIA?

Results from 1996-2016 (ISOO Annual Report to the President)

In 91% of all initial MDR requests, additional information has been declassified.

In 73% of all agency-level MDR appeals, additional information has been declassified.

In 2016, 69% of all agency-level MDR appeals, additional information was declassified.

MDR is the only way to request a review of Presidential records located in a non-PRA Presidential Library (pre-Reagan).

Expedited appeals mechanism and an appeal alternative to litigation.

What are the Advantages to filing a FOIA over a MDR?

FOIA can be used to seek unclassified information.

On appeal, FOIA provides means to address denials of information pursuant to statute.

FOIA requests do not require the same degree of specificity as MDRs.

ISOO Notices Relating to MDR

ISOO Notice 2015-01, Withholding Authorities for Mandatory Declassification Review: This details the designations to be used to identify information redacted or withheld following review under MDR.

ISOO Notice 2014-01, Appeal Rights for Mandatory Declassification Review Requests and the Rejection of Requests for Specific Reasons: This provides clarification for the “two-year rule” that allows agencies to stand by previous declassification decisions and granting appropriate appeal rights.

ISOO Notice 2013-03, Processing of Mandatory Declassification Review Requests Appealed to the Interagency Security Classification Appeals Panel: This requires Federal agency declassification offices to continue to process MDR requests that have been appealed to the ISCAP in cases where the agency has not made a decision within one year of the filing of an initial request or within 180 days of an internal agency appeal.

Resources

The Order (E.O. 13526): <http://www.archives.gov/isoo/pdf/cnsi-eo.pdf>

The Directive (32 CFR Part 2001): <https://www.archives.gov/files/isoo/policy-documents/isoo-implementing-directive.pdf>

ISCAP Bylaws (32 CFR Part 2003):
<https://www.federalregister.gov/documents/2012/07/09/2012-16655/the-interagency-security-classification-appeals-panel-iscap-bylaws-rules-and-appeal-procedures>

ISCAP: <https://www.archives.gov/declassification/iscap>

MDR Appeal Process: <https://www.archives.gov/declassification/iscap/mdr-appeals.html>

MDR Contacts: <https://www.archives.gov/declassification/iscap>

ISOO: <http://www.archives.gov/isoo/>

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