

TO: Transition Team

FROM: Attached List of Organizations

RE: National Security Classification of Information

DATE: November 12, 2008

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During the last 8 years critically important governmental actions have been shrouded in excessive secrecy with significant deleterious impacts on the decision-making process. The secrecy has shielded these official actions from scrutiny under the mantle of national security, with overclassification, selective and limited declassification, and improper reclassification of previously released information used to avoid oversight and accountability add undermine constitutional checks and balances. Often, a claim of national security secrecy ends any public inquiry into allegations of misconduct, and selective release of national security information allows the government to unfairly influence public opinion and avoid embarrassment.

Proper classification of national security information is essential to protect our nation, but rampant overclassification undermines the integrity of the very system we depend upon to ensure our safety. Classification has surged dramatically since September 11, 2001, going from 8 million classification actions in 2001 to an all-time high of 23 million in 2007. The cost to protect classified information has skyrocketed from \$4.7 billion in 2001 to \$8.65 billion in 2007. In addition, agencies have been withdrawing archived records from public access and improperly reclassifying them. Officials from the military and intelligence sectors have admitted that 50 percent or more of decisions to classify are improper.

The declassification process has been plagued by delay, obstruction, and avoidance. And largely unchecked power to create and hold secrets in the federal government is concentrated in a small group of decision-makers who often fail to consider significant public interests in release of certain classified records or the damage to government operations and national security created by barriers to information sharing. Those agencies have reclassified publicly released records with abandon and fought efforts to declassify non-sensitive records.

### **Recommendations:**

**The new president should immediately issue a presidential directive to the executive branch that tasks the Information Security Oversight Office with chairing an interagency taskforce to revise within six months the framework for designating information that requires classification in the interest of national security (Executive Order 12958, as amended) with the objective of reducing national security secrecy to the essential minimum, declassifying all information that has been classified without a valid national security justification, and ensuring that the public interest is considered in all further decisions to classify or declassify.** The directive should direct consultation with the public in the development of the new executive order, as took place in the Clinton administration and a draft of the new executive order should be published for public comment prior to final

submission to the President for his review. The directive should instruct the taskforce to consider the following revisions to the executive order on classification:

- Steps to reduce overclassification;
- Requiring original classifiers to identify or describe the damage to national security that could result from the unauthorized disclosure of the information and to balance that with the damage to national security that could occur from classifying the information;
- Requiring original classifiers to consider the public interest prior to classifying information;
- Directing classifiers to use the lowest appropriate classification level and the shortest appropriate duration for classification;
- Requiring that each classification decision, both original and derivative, be traceable to the specific individual responsible for the decision.
- Setting up mechanisms for oversight within each agency, including independent classification and declassification advisory boards, systems to track classification decisions, regular auditing, training, and internal agency remedies for improper classification decisions.
- Requiring a declassification authority to weigh the public interest in declassifying information, even when the information continues to meet the standards for classification.
- Steps to prevent the improper reclassification of information after it has been declassified and released to the public.
- Steps to systematize the declassification of historical records that are of great interest to the public.
- Steps to reduce the interference caused by federal classification of information on state, local, and tribal security and public safety activities.

A proposed draft Presidential Directive is attached to this memorandum.

**The new president, after the issuance of the new executive order on classification, should task each federal agency that classifies information to conduct a detailed public review of its classification practices with the objective of reducing national security secrecy to the essential minimum and declassifying all information that has been classified without a valid national security justification, whose disclosure would no longer cause any harm to the national security, or of which the continued classification would be outweighed by the public interest.**

**The new president should work with Congress to accelerate declassification of historical records through passage of an omnibus Historical Records Act (HRA).** An omnibus Historical Records Act should be enacted in order to facilitate the declassification of historically significant information in a timely manner, bring greater consistency and efficiency to the declassification process, account for the significant public interest in the declassification of historical records, and reduce the burden and delay inherent in the current declassification process. The HRA should establish a National Declassification Center to speed review and release of critical historical materials, institute a very strict standard for reclassification, and reform the procedures for reviewing records older than 25 years.

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## PRESIDENTIAL DIRECTIVE

### **MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES**

#### **SUBJECT: National Security Information**

As threats to our nation have evolved with the end of the Cold War and the emergence of global terrorism, it is necessary to re-evaluate our security classification and safeguarding systems. These tools are vital to protecting our security, but are dangerous, expensive, and contrary to the public interest in open and accountable government when they are misused.

The number of classification decisions made in the executive branch has grown precipitously since the September 11, 2001, terrorist attacks on the United States while at the same time the Program Manager for the Information Sharing Environment at the Office of the Director of National Intelligence, the National Commission on Terrorism Attacks Upon the United States (“9/11 Commission”), the Government Accountability Office, and others have warned that excessive classification and information controls imperil the information sharing across the federal government and with state and local governments that is necessary for our safety and security. Rampant overclassification has interfered with oversight and accountability, and has undermined the decisionmaking process, without providing any additional security for the nation.

Accordingly, today I am initiating a review of the framework for designating information that requires classification in the interest of national security (Executive Order 12958, as amended) with the objective of reducing national security secrecy to the essential minimum, declassifying all information that has been classified without a valid national security justification, whose disclosure would no longer cause any harm to the national security, or of which the continued classification would be outweighed by the public interest in disclosure.

The review will be conducted by an interagency taskforce chaired by the Director of the Information Security Oversight Office in coordination with the agencies that hold classification and declassification authority. The review will also be coordinated with the Public Interest Declassification Board and will include consultation with the public, including the civil liberties, historical, and archival communities.

During the review, the interagency taskforce shall consider the questions listed below. The answers to these questions should serve as a basis for the new proposed executive order, which will be published for public comment prior to final submission to me for my review.

- What steps can be taken to avoid excessive classification, reduce the duration of classification, and ensure that records are classified at the lowest appropriate classification level?
- What steps can be taken to require original classifiers to identify or describe the damage to national security that could result from the unauthorized disclosure of the information

and to balance that with the damage to national security that could occur from classifying the information?

- What steps can be taken to incorporate appropriate consideration of the damage to the public interest prior to classifying information and in declassifying information, even when the information continues to meet the standards for classification?
- What steps can be taken to ensure that each classification decision, both original and derivative, is traceable to the specific individual responsible for the decision thus fostering accountability?
- What steps can be taken within each agency to ensure oversight of classification decision making, including accountability and training for individuals with classification and declassification authority?
- What bodies can be created within agencies to provide guidance on declassification decisions and to represent the public interest in the agency's classification and declassification decisionmaking?
- What steps can be taken to prevent the improper reclassification of information that has been declassified and released to the public?
- What steps can be taken to systematize the declassification of historical records that are of great interest to the public?
- What steps can reduce the interference caused by federal classification of information on information sharing with state, local, and tribal authorities and with the public?

The Chairman of the task force shall report to the Assistant to the President for National Security Affairs. The review shall be completed within six months, at which time a draft executive order superseding E.O. 12958, as amended, shall be submitted for formal coordination.

[signed]