

OBAMA HOLDING OFF ON DECLASSIFICATION ORDER BUSH MADE

Steven Aftergood reports that a looming December 31, 2009 declassification deadline—imposed by Bush’s Executive Order on classification—presents a big dilemma for the Obama White House. Obama’s been preaching openness. Yet Bush’s EO says that documents that involve multiple agency classification interests will automatically be declassified at the end of the year. And the agencies that haven’t gotten around to reviewing some documents that fall under the EO are balking. And so Obama’s trying to push through a new EO quickly.

Development of a new executive order on classification of national security information is now proceeding at an accelerated pace in order to preempt a deadline that would require the declassification of millions of pages of historical records next month.

A revised draft executive order was circulated to executive branch agencies by the Office of Management and Budget on November 16, with agency comments due back today, November 23. A final order is likely to be issued by the end of this year.

There is an incentive to complete the development of the executive order before December 31, 2009 because of a deadline for declassification of historical records that falls on that date. Under the current Bush executive order, classified records that are at least 25 years old and that have been referred from one agency to another because they involve multiple agency interests are supposed to be automatically declassified at the end of

this year. (See E.O. 13292, section 3.3(e)(3)).

But in order to meet this December deadline, several agencies would have to forgo a review of the affected historical records, which they are unwilling to do. And so it seems they will simply be excused from compliance. But in order to modify the deadline in the Bush order, it will be necessary to issue another executive order. If the comprehensive new Obama order on classification policy (which would assign processing of such records to a National Declassification Center that does not yet exist) is not ready for release by December 31, then another stand-alone order would have to be issued, canceling or extending the looming deadline. And officials are reluctant to issue such an order since they say it would be awkward for the avowedly pro-openness Obama Administration to relax or annul a declassification requirement that was imposed by the ultra-secret Bush Administration.

The dilemma illustrates the big problem with EOs. Even putting aside the way that some Administrations have just pixie dusted their own EOs (indeed, the Bush EO in question is the one he used to claim, four years after the fact, that Cheney didn't have to follow the rules on classification and declassification that agencies had to), they're simply pieces of paper that the next Administration can and will rewrite.

Which is why Congress really needs to push through some laws on classification policy (starting with State Secrets), to prevent the executive branch from just using classification policy to accrue more power and/or evade oversight. And so that we, as citizens, can begin to scrutinize what Ronnie Reagan did in

our name.