

OBAMA'S NEW CLASSIFICATION POLICY: THE GOOD AND THE BAD

Steven Aftergood reviews Obama's new classification Executive Order and finds much to be happy about.

For the first time, each executive branch agency that classifies information will be required to perform "a comprehensive review" of its internal classification guides to validate them and "to identify classified information that no longer requires protection and can be declassified." The new requirement is one of the most potentially significant features of an Executive Order on national security classification policy that was signed by President Obama last week.

There are more than two thousand agency classification guides currently in use and they constitute the detailed operating instructions of the classification system. If the so-called Fundamental Classification Guidance Review (set forth in section 1.9 of the new Order) is faithfully implemented by the agencies, it should eliminate numerous obsolete classification requirements and effectively rewrite the "software" of government secrecy.

Other outstanding features of the new Executive Order 13526 include the establishment of a National Declassification Center to coordinate and streamline the declassification process (section 3.7); the adoption of the principle that "No information may remain classified indefinitely" (section 1.5d); and the elimination of an intelligence community veto of

declassification decisions made by the Interagency Security Classification Appeals Panel. This veto authority had been granted by the Bush Administration in 2003.

But the Order contains many dozens of other changes in language that are subtle but important. So, for example, section 3.1g states that “no information may be excluded from declassification... based solely on the type of document or record in which it is found.” What this simple formulation does (or is expected to do) is to eliminate the permanent classification of the President’s Daily Brief (PDB), the daily intelligence compilation that is delivered to the President each morning. The CIA has long argued that by virtue of being presented to the President, the information contained in PDBs is inherently and permanently classified. Now it’s not.

[snip]

Some of the changes suggest previously unsuspected problems or issues. Section 4.1c states curiously that “An official or employee leaving agency service may not ... direct that information be declassified in order to remove it from agency control.” There may be a story behind that new provision, but I don’t know what it is. Section 3.1h states for the first time that classified “artifacts” and other classified materials that are not in the form of records shall be declassified in the same way as classified records.

I wonder whether they’re considering “CIA officer’s classified identity” to be an artifact in that last bit?

But Aftergood notes some areas in which Obama’s

E0 supports more secrecy.

Not all of the changes are in the direction of increased disclosure. Section 4.3 authorizes the Attorney General, as well as the Secretary of Homeland Security, to establish highly secured Special Access Programs, an authority reserved in the previous Executive Order to the Secretaries of Defense, State, Energy and the then-Director of Central Intelligence. Sections 1.8c and 3.5g exclude material submitted for prepublication review from classification challenges and mandatory declassification review.

This one is actually quite concerning. Remember that a lot of Bush's most secret—arguably illegal—programs (like his torture program, his domestic surveillance program, and his assassination program) may have had aspects that were SAPs. Letting DHS and DOJ institute them seems to increase the risk of domestic SAPs.

Also, while I could be misreading this, but this passage would seem to explicitly prevent someone—oh, say, the Vice President—from declassifying a CIA officer's identity without either the assent of the CIA Director or written permission to do so.

PART 3 – DECLASSIFICATION AND DOWNGRADING

Sec. 3.1. Authority for
Declassification. (a) Information shall
be declassified as soon as it no longer
meets the standards for classification
under this order.

(b) Information shall be declassified
or downgraded by:

(1) the official who authorized the
original classification, if that
official is still serving in the same
position and has original classification

authority;

(2) the originator's current successor in function, if that individual has original classification authority;

(3) a supervisory official of either the originator or his or her successor in function, if the supervisory official has original classification authority;
or

(4) officials delegated declassification authority in writing by the agency head or the senior agency official of the originating agency.

Of course, given the OLC judgment that EOs can be pixie dusted at will, this may not prevent someone from doing what Cheney did to Valerie Plame. But at least there seems to be the intent to prevent such attacks.