

[REDACTED]

(U) **QUESTIONS FOR THE RECORD**
(U) **SENATE SELECT COMMITTEE ON INTELLIGENCE**
(U) **OPEN HEARING ON DECLASSIFICATION**
(U) **09 SEPTEMBER 2020**

(U) **Questions from Acting Chairman Rubio and Vice Chairman Warner**

(U) **VOLUME OF DECLASSIFIED MATERIALS**

1. (U) **What percentage of the Intelligence Community's records eligible for Automatic Declassification pursuant to Executive Order 13526 do you estimate is being declassified?**

(U) The amount of intelligence information eligible for declassification that is actually declassified varies widely across the Intelligence Community (IC). IC elements that are part of larger departments and agencies (D/As) often defer to their parent organizations to handle declassification. Some IC elements are too young to have information eligible for declassification. Agencies with more established programs are declassifying between 10% and 70% of the material. Many agencies find it difficult to keep up with the amount of information eligible for declassification.

2. (U) **What is the primary reason those eligible for automatic declassification are not being automatically declassified?**

(U) Many IC records contain classified national security information (CNSI) recognized by subject matter experts, the Interagency Security Classification Appeals Panel (ISCAP), and E.O. 13526, *Classified National Security Information*, as requiring protection beyond 25, 50, and even 75 years. Due to the high likelihood of such information being present, D/As must do a thorough review of all classified records that have permanent historical value to prevent inadvertent release of information still requiring protection per an ISCAP-approved declassification guide. Given the volume of data requiring review, this can take a significant amount of time. Additionally, increasing numbers of records include information drawn from multiple D/As, which must be reviewed by each relevant D/A.

(U) **COST**

3. (U) **How much does the IC currently spend per year on its declassification programs? Please provide information by agency, if the agencies capture it.**

(U [REDACTED]) As noted earlier, some IC elements are younger than 25 years old, so they do not have declassification programs in place, and either do not spend anything on those programs or have agreements with other agencies to handle legacy information. Other IC elements are parts of larger departments, so their parent organizations review their information for declassification, and the parent organizations cover costs out of their budgets.

Classified By: [REDACTED]
Derived From: [REDACTED]
Declassify On: [REDACTED]

[REDACTED]

[REDACTED]

(U) IC agencies reported the following declassification costs:

- (U [REDACTED]) Central Intelligence Agency (CIA): [REDACTED].
- (U) Defense Intelligence Agency (DIA): [REDACTED].
- (U) Federal Bureau of Investigation (FBI): [REDACTED].
- [REDACTED] National Security Agency (NSA): [REDACTED].
- (U) National Reconnaissance Office (NRO): [REDACTED].
- (U [REDACTED]) National Geospatial-Intelligence Agency (NGA): [REDACTED].
- (U [REDACTED]) Office of the Director of National Intelligence (ODNI): [REDACTED].

(U) **PROGRESS ON REFORM**

4. (U) **What progress has the IC made in standardizing declassification guidance in IC element classification guides?**

(U) D/As that have declassification guides wrote them based on E.O. 13526 and National Archives & Records Administration (NARA)/Information Security Oversight Office (ISOO) guidance. The guides were then approved by ISCAP, which worked to make the guides more consistent with each other. Once approved, D/As incorporate the guidance into declassification instructions in their security classification guides. Those D/As with suborganizations share the guidance downward. While more work can be done on integration, the steps taken so far are important in establishing a more consistent foundation from which to work.

5. (U) **What progress has the IC made in automating declassification?**

(U [REDACTED]) “Automating declassification” is a phrase with many interpretations. In its most basic sense, the IC uses secure email and networking capabilities to communicate within and between IC elements to complete appropriate consultations on classified materials. Another capability is digitizing a paper record for electronic review and marking by human analysts, as FBI currently does. The [REDACTED] created tools to aid with searches in documents and streamline and standardize review and release practices. Those tools have increased review consistency, speed, accuracy, and accelerated mission support by reducing or eliminating multiple manual processes. [REDACTED] anticipates that further development of these capabilities will enable greater public access to its records and expedite response to mandatory declassification requests.

[REDACTED]

[REDACTED]

(U) In a wider sense, the phrase can also refer to the use of artificial intelligence to complete initial reviews of information to determine whether it can be declassified. Various efforts are exploring these possibilities. One example is DIA's research into the University of Maryland's ARLIS initiatives, which offer technical promise for achieving meaningful progress. However, no automated declassification actions have been initiated under this project. Additionally, there remain concerns about standards for such technology, which would need to come from NARA/ISOO—the entity that oversees classification throughout the executive branch—and about funding for such projects.

(U) **OVERCLASSIFICATION AND COMPARTMENTATION RE: SPACE ASSETS**

6. (U) **How is the ODNI addressing the problems of overclassification and compartmentation that are impeding collaboration between the Department of Defense and the Intelligence Community regarding space activities, as suggested in the op-ed on July 13, 2020, in *Defense News* by Robert Work and Dennis Blair?**

[REDACTED]

[REDACTED]

(U) More generally, under E.O. 13526, the ultimate source of classification and compartmentation determinations are original classification authorities (OCAs), typically some of the most senior officials in each organization. These individuals are trained each year on their responsibilities as OCAs. Lists of designated officials and the status of their training are submitted to NARA/ISOO every year as part of each agency's required reporting on its classification management program. Accordingly, if overly restrictive decisions are being made by these officials, it is up to them and NARA/ISOO, as the overseer of classification management across the executive branch, to explore solutions for making better decisions.

[REDACTED]

[REDACTED]

(U) DECLASSIFICATION AT 25 YEARS

7. (U) What percentage of the IC records are exempted from declassification at the 25 year interval?

(U) The percentage of IC records exempted from declassification at 25 years varies greatly depending on the particular IC element's mission. Some IC elements have approval to exempt nearly all of their records from declassification at 25 years. Other IC elements work to declassify all their records at the 25-year mark. The range of percentages is 5% to 100%.

(U) TECHNOLOGIES TO HELP DECLASSIFICATION

8. (U) What technologies has the IC experimented with to automate and improve declassification?

(U [REDACTED]) Those agencies that can afford to explore automation technologies are experimenting with various capabilities. One solution is an [REDACTED]

[REDACTED]

Another is automated search aids that facilitate and expedite the public's access to permanent records accessioned to NARA. A third capability is software that can perform keyword searches related to specific terms or topics in individual records during mandatory declassification reviews. This can substantially reduce the time spent reading and reviewing records for redactions, improve quality control reviews, and expedite responses to mandatory declassification requests. Lastly, some research has been done on [REDACTED]

[REDACTED]

These technologies remain in the experimental phase.

9. (U) What are the IC plans for deploying such technologies?

(U) The FBI hopes to incorporate machine learning technologies in its declassification process within the next 2 to 4 years. IC agencies are exploring various technologies related to records and search capabilities as noted above, but do not have timelines for deploying the technologies at this time. Smaller IC elements within larger D/As do not have the resources to do the same but would likely take advantage of technologies deployed by their parent organizations.

10. (U) What agencies are piloting such technologies or have already deployed them? What are some of their lessons learned?

(U [REDACTED]) [REDACTED] is currently piloting two capabilities—automated search aids to facilitate automatic declassification reviews in compliance with NARA requirements and keyword searches related to its equities in mandatory declassification reviews. These efforts are new enough that there are not yet any lessons learned.

[REDACTED]



(U) [Redacted text block]

(U) DISCRETIONARY DECLASSIFICATION REVIEWS

11. (U) What criteria do you use to decide what materials to initiate such declassification reviews for?

(U) Common criteria for discretionary declassification reviews include high public interest (often measured through the number of Freedom of Information Act requests received on a topic), records disposition schedules, historical significance, the potential yield of releasable documents, and input from agency historians, sometimes in relation to significant events in an agency's history.

12. (U) Are all discretionary declassification reviews approved by the IC Transparency Council?

(U) The IC Transparency Council does not approve discretionary declassification reviews. Discretionary declassification reviews are typically approved by agencies in furtherance of authorized agency activities.

13. (U) How do you ensure that declassification reviews are not initiated for political reasons, similar to the prohibitions in Executive Order 13526 for using classification to conceal violations of law, hide embarrassing material, etc.?

(U) Automatic declassification reviews are initiated solely on the basis of the age of the record. Mandatory declassification reviews are initiated based on requests received from the public, as outlined in law and regulation; historical value or interest; or requests from the White House or Congress. In many agencies, the review of information to be declassified is performed by both junior and senior officers, as well as subject matter experts, to ensure proper handling and protection of sensitive and classified national security information, as appropriate. Lastly, the OCAs who make the declassification decisions are trained annually on their responsibilities, including the prohibitions and limitations in E.O. 13526 § 1.7.

14. (U) How do you take into consideration discretionary declassifications that might have a political effect that occur close to an election?

(U) Agencies follow guidance laid out in E.O. 13526, 32 C.F.R. parts 2001 and 2003, and (for DoD entities) DoD Manual 5200.01. In line with the text of these regulations, the factors considered when making declassification decisions include historical interest, public interest, and Government transparency; politics is not part of the process. Additionally, most



[REDACTED]

reviews are complex and take considerable and variable time to complete, making it difficult for a requester to time releases to any particular date or event.

(U) IMPACT OF DECLASSIFICATION ON SOURCES AND METHODS

15. (U) Can an IC element prevent an agency from declassifying information if it believes the declassification will have a deleterious impact on sources and methods?

(U) The authority for declassification is set forth in Part 3 of E.O. 13526. With limited exceptions, declassification decisions are made by the agency official who authorized the original classification, their successor, or a supervisory official. Consistent with Section 3.1(c) of E.O. 13526, the DNI may, with respect to the Intelligence Community, declassify information or intelligence relating to intelligence sources, methods, or activities. However, to do so, the DNI must first consult with the heads of the originating IC element. In addition, the Attorney General, may declassify, downgrade, or direct declassification of intelligence as set forth in the President's Memorandum on Agency Cooperation with Attorney General's Review of Intelligence Activities Relating to the 2016 Presidential Campaigns, issued May 23, 2019.

(U) Questions from Senator Wyden

(U) ARGENTINA DECLASSIFICATION PROJECT

1. (U) How much of the documentation declassified and released by the Argentina Declassification Project would still be classified or withheld from the public but for the presidential tasking?

(U) Absent the presidential tasking, some documentation released through the Argentina Declassification Project (ADP) would have been declassified and released. However, much of the information (hundreds of documents totaling thousands of pages) would have remained classified because the information did not meet the criteria for discretionary release and the personnel involved in reviewing the materials would have worked on other declassification actions, as priorities dictated.

2. (U) What other important historical records more than 25 years old remain classified due to the lack of a presidential tasking? Please identify topics related to U.S. foreign and defense policy, covert action, domestic operations with political and legal implications and other important historical subjects. What capabilities does the U.S. Government have to achieve a similar level of declassification of those topics absent the resources made available for the Argentina Declassification Project?

(U) Information related to multiple topics of historical interest remain classified, including some records related to [REDACTED] major military operations between the end of the Vietnam War and 1995 (the current 25-year automatic declassification date).

Declassification personnel in IC elements and, when applicable, their parent organizations are working hard to review and declassify information in these areas and others, including at the Department of State where historians continue to review historical U.S. foreign relations topics for inclusion into the State Department's Foreign Relations of the United States series.

[REDACTED]

However, there is a limited pool of people with appropriate expertise. Surging resources to an action such as the ADP meant that resources were pulled from other declassification priorities. As a result, focusing resources on one, high-priority effort such as the ADP resulted in delays to reviewing and releasing information on other topics of interest.

3. (U) **The Argentina Declassification Project was extremely labor intensive. What were the lessons learned from the Project in terms of the potential application of new technology and systems to make similar projects in the future more efficient and cost effective? To what extent would the application of new technology and systems have resulted in the declassification of Argentina documents as a matter of course, absent the presidential tasking?**

(U [REDACTED]) The main technical matter that would have relieved some of the labor burden involved in the ADP is a stronger cross-agency coordination capability that enabled agencies to collaborate on documents within a single space. The use of Inteldocs was noted as helpful, but ultimately cumbersome, as declassification is not the task it was designed for. Also, both [REDACTED]

[REDACTED] FBI also recommended the incorporation of machine learning tools to automate the identification of key terms and content.

4. (U) **What lessons learned did the DNI take from the Argentina Declassification Project in terms of coordinating among departments and agencies inside and outside the Intelligence Community? How was the DNI's coordination role necessary to achieve the Project's goals across the U.S. Government? What obstacles were there to coordination among departments and agencies and how were they overcome?**

(U [REDACTED]) Coordination of nearly 400 experts from 16 executive branch D/As that ultimately declassified and released over 7,000 records totaling almost 50,000 pages resulting in the largest government-to-government declassification and release of records in U.S. history was indeed challenging. However, the results set a new standard for the use of declassification as a tool for foreign affairs and international diplomacy, providing a uniquely valuable contribution to the causes of human rights and justice. One of the challenges with this complex and voluminous collection was the assurance that each D/A accurately identified and subsequently coordinated equities with the applicable agency. The use of Inteldocs, which ODNI oversaw, for the digital coordination of records by the majority of participating D/As was instrumental in the project's successful completion, though as noted earlier, it also presented its own set of difficulties and therefore delays. With the National Security Council's (NSC's) effective oversight, D/As were given a specific set of guidelines to follow to identify responsive records and to review them with a view towards transparency. The ADP's efficiency resulted from a combination of firm White House support (over two administrations), effective NSC leadership, sustained agency cooperation, a compelling diplomatic and human rights rationale for the effort, and popular support from nongovernmental organizations in Argentina and the United States.



(U) **DECLASSIFICATION TECHNOLOGIES**

5. (U) **Please describe the ODNI’s experience in information technology and integration policy through the IC IT Enterprise (IC ITE) and its application to declassification.**

(U) Intelligence Community Directive (ICD) 121 Section D(1) directs IC elements to first use an IC enterprise approach before adopting IC element-centric services. The ODNI and the IC now have a strong history of identifying Services of Common Concern (SoCC) for enterprise IT services that integrate well into the IC Information Environment. ICD 121 Section F(4) confirms that individual IC elements retain their original classification and declassification authorities and the related processes. IC elements are responsible for determining requirements and services for declassification. To date, no IC elements have offered or requested that a SoCC for declassification tools or services be established.



(U) **DECLASSIFICATION BY ORIGINAL CLASSIFICATION AUTHORITY**

6. (U) **Can another agency prevent declassification of information after the Original Classification Authority has authorized its declassification?**

(U) No, but questions may arise regarding which OCA has jurisdiction over the information, or multiple OCAs may be involved.

7. (U) **If yes, under what circumstances and how would that issue be resolved?**

(U) As noted above, it is possible for multiple OCAs to be involved or for the relevant OCA to be unclear. This often happens because information from multiple agencies is used in a single record. In these cases, coordination within multiple agencies is performed to ensure that all agencies with equities in the information are consulted.

(U) **COSTS OF CLASSIFICATION**

8. (U) **Does the ODNI have a means to determine these costs? If so, please describe the scope and methodology. What is the current cost?**

(U) No. As the organization with oversight of declassification activities across the IC, NARA/ISOO receives reports on these costs each year. The ODNI does not receive these reports and does not have a way of determining these costs within the IC other than directly asking each IC element. Accordingly, we will defer to NARA/ISOO to provide those costs.

9. (U) **Does the ODNI have an estimate of the additional costs of classification and declassification resulting from the obsolete and ineffective declassification system described in reports of the ISOO and PIDB?**

(U) We do not have a specific estimate but note that the cost is likely equivalent to the costs of continuing to store and protect classified information until it can be reviewed. One IC agency estimated its costs in this area at a little over \$300,000 each year.





(U) DOCUMENTS WITH CLASSIFICATION FROM MULTIPLE AGENCIES

10. (U) **What policies and technologies have been put in place to allow documents that concern the equities of multiple departments and agencies to be subject to a declassification process using electronic communications and document sharing?**

(U) No specific policy governs the review of information for declassification among multiple agencies. Regardless, interagency coordination on records and information containing the equities of multiple D/As is typically accomplished over secure email or Intelink tools such as Inteldocs. However, some smaller IC elements, such as those under larger D/As, have limited access to these tools, which may result in the use of paper copies rather than electronic copies.

(U) INTEGRITY OF CLASSIFICATION DECISIONS

11. (U) **What incentives and disincentives have been put in place to ensure that the prohibitions and limitations on classification in Section 1.7 of Executive Order 13526 are adhered to? What policies have been enacted to ensure that there is accountability for failure to adhere to those prohibitions and limitations?**

(U) Original and derivative classifiers throughout the IC take required training on their classification responsibilities every one to two years, depending on agency policy. Most agencies include information on sanctions for violations of E.O. 13526 in their training for both original and derivative classifiers. Depending on how the agency has set up its training, some personnel will find themselves locked out of their systems and unable to complete their work if they do not complete the training on time. Training statistics, along with other classification matters, are included in each agency's self-inspection program. Reports on self-inspection findings and actions to resolve those findings are submitted to NARA/ISOO every year and form the basis for NARA/ISOO's Annual Report to the President.

