

(b) Subject to paragraph (f) of this section, when it receives a request, the Department, if it is the originating agency, shall determine whether the information or any reasonably segregable portion of it no longer requires protection. If so, the Department shall promptly make such information available to the requester, unless withholding it is otherwise warranted under applicable law.

(c) When the Department receives a request for information in a document which is in its custody, but which was classified by another agency, it shall refer the request to the appropriate agency for review. The Department shall also notify the requester of the referral unless the association of the reviewing agency with the information requires protection in the interest of national security. The reviewing agency shall respond directly to the requester and shall notify the Department of its determination.

(d) During the transition period allowed by Executive Order 12065 from declassification at 30 years to declassification at 20 years, all requests for classified United States Government originated information over 30 years old not previously declassified and transferred to the Archives will be processed according to paragraphs (b) and (c) of this section.

(e) In response to a request for a classified document in its possession, the Department may not refuse to confirm the existence or non-existence of the document unless the fact of its existence or non-existence would itself be classifiable.

(f) In the case of requests for documents containing foreign government information, the Department, if it is also the agency which initially received the foreign government information, shall determine whether the foreign government information in the document may be declassified and released in accordance with policies or guidelines, consulting with other interested agencies as necessary. If the Department is not the agency which received the foreign government information, it shall refer the request to the original receiving agency, which shall take action on the request.

(g) In considering requests for mandatory review, the Department may decline to review again any request for material which has been reviewed within one year and denied, except as the request constitutes an appeal under subpart G of this subchapter.

§ 171.23 Determination in disputed cases.

(a) Information that continues to meet the legal requirements for classification under section 1-3 of the Order at the time of review for declassification is presumed to require continued protection and may be withheld from disclosure under the Order and section (b)(1) of the Freedom of Information Act. However, as stated in section 3-303 of the Order, it is government policy to consider the public interest in disclosure when information is reviewed for declassification. In some cases, the need to protect information that continues to meet the requirements of classification may be outweighed by the public interest in disclosure of information. When such a question arises, the authority reviewing the information shall refer the question to the relevant Top Secret authority in the Department of State to make a policy determination whether the public interest in disclosure outweighs the damage to the national security that might reasonably be expected from the disclosure. In making such determination, that authority shall respect the intent of the Order to protect foreign government information and confidential foreign sources. That authority shall also consult with other officials in the agency as the circumstances warrant.

(b) In the Department of State, if such a case is appealed by the requester of the information after receiving a notice of denial, the case shall be referred to the Appeals Review Panels in accordance with the Department's appeal procedures. If the Panel should decide that the case raises a question as to whether the need to protect information that continues to meet the requirements of classification is outweighed by the public interest in disclosure, the question shall be referred to a principal officer for determination.