

shall be in writing to an original classification authority (OCA) with jurisdiction over the information and a copy of the challenge shall be sent to the Office of Information Programs and Services (IPS) of the Department of State, SA-2, 515 22nd St. NW., Washington, DC 20522-6001. The Department (either the OCA or IPS) shall provide an initial response in writing within 60 days.

(b) *Appeal procedures and time limits.* A negative response may be appealed to the Department's Appeals Review Panel (ARP) and should be sent to: Chairman, Appeals Review Panel, c/o Information and Privacy Coordinator/ Appeals Officer, at the IPS address given above. The appeal shall include a copy of the original challenge, the response, and any additional information the appellant believes would assist the ARP in reaching its decision. The ARP shall respond within 90 days of receipt of the appeal. A negative decision by the ARP may be appealed to the Interagency Security Classification Appeals Panel (ISCAP) referenced in section 5.3 of Executive Order 12958. If the Department fails to respond to a formal challenge within 120 days or if the ARP fails to respond to an appeal within 90 days, the challenge may be sent to the ISCAP.

### §9.9 Declassification and downgrading.

(a) *Declassification processes.* Declassification of classified information may occur:

(1) After review of material in response to a Freedom of Information Act (FOIA) request, mandatory declassification review request, discovery request, subpoena, classification challenge, or other information access or declassification request;

(2) After review as part of the Department's systematic declassification review program;

(3) As a result of the elapse of the time or the occurrence of the event specified at the time of classification;

(4) By operation of the automatic declassification provisions of section 3.3 of the Executive Order with respect to material more than 25 years old.

(b) *Downgrading.* When material classified at the Top Secret level is reviewed for declassification and it is de-

termined that classification continues to be warranted, a determination shall be made whether downgrading to a lower level of classification is appropriate. If downgrading is determined to be warranted, the classification level of the material shall be changed to the appropriate lower level.

(c) *Authority to downgrade and declassify.* (1) Classified information may be downgraded or declassified by the official who originally classified the information if that official is still serving in the same position, by a successor in that capacity, by a supervisory official of either, or by any other official specifically designated by the Secretary or the senior agency official.

(2) The Department shall maintain a record of Department officials specifically designated as declassification and downgrading authorities.

(d) *Declassification in the public interest.* Although information that continues to meet the classification criteria of the Executive Order or a predecessor order normally requires continued protection, in some exceptional cases the need to protect information may be outweighed by the public interest in disclosure of the information. When such a question arises, it shall be referred to the Secretary or the Senior Agency Official for decision on whether, as an exercise of discretion, the information should be declassified and disclosed. This provision does not amplify or modify the substantive criteria or procedures for classification or create any substantive or procedural right subject to judicial review.

(e) *Public dissemination of declassified information.* Declassification of information is not authorization for its public disclosure. Previously classified information that is declassified may be subject to withholding from public disclosure under the FOIA, the Privacy Act, and various statutory confidentiality provisions.

### §9.10 Mandatory declassification review.

All requests to the Department by a member of the public, a government employee, or an agency to declassify and release information shall result in a prompt declassification review of the