

## § 197.4

## 32 CFR Ch. I (7-1-13 Edition)

studies, or reports) regardless of the person's employment status.

### § 197.4 Policy.

It is DoD policy, pursuant to E.O. 12958, that:

(a) Anyone accessing classified material must possess the requisite security clearance.

(b) Information requested by historical researchers shall be accessed at a DoD activity or facility under the control of the National Archives and Records Administration (NARA). Usually such access will occur at either the Washington National Records Center (WNRC) in Suitland, Maryland, or NARA's Archives II in College Park, Maryland.

(c) Access to records by historical researchers shall be limited to the specific records within the scope of the proposed historical research over which the Department of Defense has classification authority. Access shall also be limited to any other records for which the written consent of other Agencies that have classification authority over information contained in or revealed by the records has been obtained.

(d) Access to unclassified OSD Component files by historical researchers shall be permitted consistent with the restrictions of the exemptions of the Freedom of Information Act that are contained in E.O. 12958 and explained in the appendix B to this part (5 U.S.C. 552). The procedures for access to classified information shall be used if the requested unclassified information is contained in OSD files whose overall markings are classified.

(e) Under E.O. 12958, or its successor, persons permanently assigned within the Executive Branch may be authorized access to classified information for official projects under DoD classification authority, provided such access is essential to the accomplishment of a lawful and authorized Government purpose and a written determination of the trustworthiness of the persons has been made.

(f) Under E.O. 12958 and paragraph C6.2.2. of DoD 5200.01-R, persons not permanently assigned within the Executive Branch who are engaged in historical research projects or persons permanently assigned within the Exec-

utive Branch engaged in personal, i.e. unofficial projects, may be authorized access to classified information under DoD classification authority. The authorization shall be based on a written determination of the researcher's trustworthiness, on the proposed access being in the interests of national security, and on the researcher signing a copy of the letter (appendix E to this part) by which he or she agrees to safeguard the information and to authorize a review of any notes and manuscript for a determination that they contain no classified information.

(g) Access for former Presidential appointees is limited to records they originated, reviewed, signed, or received while serving as Presidential appointees.

(h) Contractors working for Executive Branch Agencies may be allowed access to classified OSD Component files. No copies of still classified documents will be released directly to a contractor. All copies of classified documents needed for a classified project will be forwarded to the office of the Contracting Government Agency responsible for monitoring the project. The monitoring office will be responsible for ensuring that the contractor safeguards the documents. The information is only used for the project for which it was requested, and that the contractor returns the documents upon completion of the final project. All copies of documents needed for an unclassified project will undergo a mandatory declassification review before the copies are released to the contractor to use in the project.

(i) The records maintained in OSD Component office files and at the WNRC cannot be segregated, requiring that authorization be received from all agencies whose classified information is or is expected to be in the requested files for access to be permitted.

(j) All researchers must hold security clearances at the classification level of the requested information. In addition, all DoD employed requesters, to include DoD contractors, must have Critical Nuclear Weapons Design Information (CNWDI) access and all other Executive Branch and non-Executive

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Branch requesters must have a Department of Energy issued “Q” clearance to access CNWDI information.

**§ 197.5 Responsibilities.**

(a) The Director of Administration and Management, Office of the Secretary of Defense, (DA&M, OSD), or designee shall, according to the Deputy Secretary of Defense Memorandum dated August 25, 1993, be the approval authority for access to DoD classified information in OSD Component files and in files at the National Archives, Presidential libraries, and other similar institutions.

(b) The Heads of the OSD Components, when requested, shall:

(1) Determine whether access is for a lawful and authorized Government purpose or in the interest of national security.

(2) Determine whether the specific records requested are within the scope of the proposed historical research.

(3) Determine the location of the requested records.

(4) Provide a point of contact to the OSD Records Administrator.

(c) The OSD Records Administrator shall:

(1) Exercise overall management of the Historical Research Program.

(2) Maintain records necessary to process and monitor each case.

(3) Obtain all required authorizations.

(4) Obtain, when warranted, the legal opinion of the General Counsel of the Department of Defense regarding the requested access.

(5) Perform a mandatory declassification review on documents selected by the researchers for use in unclassified projects.

(6) Provide to prospective researchers the procedures necessary for requesting access to OSD Component files.

(d) The Researcher shall provide any information and complete all forms necessary to process a request for access.

**§ 197.6 Procedures.**

The procedures for processing and/or researching for access to OSD Component files are in appendices B, C, and D to this part.

**APPENDIX A TO PART 197—EXPLANATION OF FREEDOM OF INFORMATION ACT (5 U.S.C. 552) EXEMPTIONS**

**A. Exemptions**

Exemption	Explanation
(b)(1) .....	Applies to information that is currently and properly classified pursuant to an Executive Order in the interest of national defense or foreign policy (See E.O. 12958 and DoD 5200.01-R) (Sec 1.4. Classification Categories from E.O. 12958 are provided on the next page);
(b)(2) .....	Applies to information that pertains solely to the internal rules and practices of the Agency; this exemption has two profiles, “high” and “low.” The “high” profile permits withholding a document which, if released, would allow circumvention of an Agency rule, policy, or statute, thereby impeding the Agency in the conduct of its mission. The “low” profile permits withholding if there is no public interest in the document, and it would be an administrative burden to process the request;
(b)(3) .....	Applies to information specifically exempted by a statute establishing particular criteria for withholding. The language of the statute must clearly state that the information will not be disclosed;
(b)(4) .....	Applies to information such as trade secrets and commercial or financial information obtained from a company on a privileged or confidential basis which, if released, would result in competitive harm to the company;
(b)(5) .....	Applies to inter- and intra-Agency memoranda that are deliberative in nature; this exemption is appropriate for internal documents that are part of the decision-making process, and contain subjective evaluations, opinions, and recommendations;
(b)(6) .....	Applies to information the release of which could reasonably be expected to constitute a clearly unwarranted invasion of the personal privacy of individuals; and
(b)(7) .....	Applies to records or information compiled for law enforcement purposes that could reasonably be expected to interfere with law enforcement proceedings; would deprive a person of a right to a fair trial or impartial adjudication; could reasonably be expected to constitute an unwarranted invasion of the personal privacy of others; disclose the identity of a confidential source; disclose investigative techniques and procedures; or could reasonably be expected to endanger the life or physical safety of any individual.

See Chapter III of DoD 5400.07-R for further information.

**B. Extract From E.O. 12958**

Section 1.4. Classification Categories. Information shall not be considered for classification unless it concerns:

- (a) Military plans, weapons systems, or operations;
- (b) Foreign government information;
- (c) Intelligence activities (including special activities), intelligence sources or methods, or cryptology;