

Department of Justice

§ 17.21

(h) Material submitted for republication review will be reviewed solely for the purpose of identifying and preventing the disclosure of Sensitive Compartmented Information and other classified information. This review will be conducted in an impartial manner without regard to whether the material is critical of or favorable to the Department. No effort will be made to delete embarrassing or critical statements that are unclassified. Materials submitted for review will be disseminated to other persons or agencies only to the extent necessary to identify classified information.

(i) The Assistant Attorney General for National Security or a designee (or, in the case of FBI employees, the Section Chief, Records/Information Dissemination Section, Records Management Division) will respond substantively to prepublication review requests within 30 working days of receipt of the submission. Priority shall be given to reviewing speeches, newspaper articles, and other materials that the author seeks to publish on an expedited basis. The Assistant Attorney General's decisions may be appealed to the Deputy Attorney General, who will process appeals within 15 days of receipt of the appeal. The Deputy Attorney General's decision is final and not subject to further administrative appeal. Persons who are dissatisfied with the final administrative decision may obtain judicial review either by filing an action for declaratory relief, or by giving the Department notice of their intention to proceed with publication despite the Department's request for deletions of classified information and giving the Department 30 working days to file a civil action seeking a court order prohibiting disclosure. Employees and other affected individuals remain obligated not to disclose or publish information determined by the Government to be classified until any civil action is resolved.

(j) The obligations of Department of Justice employees described in this subpart apply with equal force to employees of the FBI with following exceptions and provisos:

(1) Nothing in this subpart shall supersede or alter obligations assumed

under the basic FBI employment agreement.

(2) FBI employees required to sign nondisclosure agreements containing a provision for prepublication review pursuant to this subpart shall submit materials for review to the Section Chief, Records/Information Dissemination Section, Records Management Division. Such individuals shall also submit questions as to whether specific materials require prepublication review under such agreements to that Section for resolution. Where such questions raise policy questions or concern significant issues of interpretation under such an agreement, the Section Chief, Records/Information Dissemination Section, Records Management Division, shall consult with the Assistant Attorney General for National Security, or a designee, prior to responding to the inquiry.

(3) Decisions of the Section Chief, Records/Information Dissemination Section, Records Management Division, concerning the deletion of classified information, may be appealed to the Director, FBI, who will process appeals within 15 working days of receipt. Persons who are dissatisfied with the Director's decision may, at their option, appeal further to the Deputy Attorney General as provided in paragraph (i) of this section. Judicial review, as set forth in that paragraph, is available following final agency action in the form of a decision by the Director, if the appeal process in paragraph (i) of this section is pursued, the Deputy Attorney General.

[Order No. 2091-97, 62 FR 36984, July 10, 1997, as amended by Order No. 2865-2007, 72 FR 10069, Mar. 7, 2007]

Subpart B—Classified Information

§ 17.21 Classification and declassification authority.

(a) Top Secret original classification authority may only be exercised by the Attorney General, the Assistant Attorney General for Administration, and officials to whom such authority is delegated in writing by the Attorney General. No official who is delegated Top Secret classification authority pursuant to this paragraph may redelegate such authority.

(b) The Assistant Attorney General for Administration may delegate original Secret and Confidential classification authority to subordinate officials determined to have frequent need to exercise such authority. No official who is delegated original classification authority pursuant to this paragraph may redelegate such authority.

(c) Officials authorized to classify information at a specified level are also authorized to classify information at a lower level. In the absence of an official authorized to exercise classification authority pursuant to this section, the person designated to act in lieu of such official may exercise the official's classification authority.

§ 17.22 Classification of information; limitations.

(a) Information may be originally classified only if all of the following standards are met:

(1) The information is owned by, produced by or for, or is under the control of the United States Government;

(2) The information falls within one or more of the categories of information specified in section 1.5 of Executive Order 12958; and

(3) The classifying official determines that the unauthorized disclosure of the information reasonably could be expected to result in damage to the national security and such official is able to identify or describe the damage.

(b) Information may be classified as Top Secret, Secret, or Confidential according to the standards established in section 1.3 of Executive Order 12958. No other terms shall be used to identify United States classified national security information except as otherwise provided by statute.

(c) Information shall not be classified if there is significant doubt about the need to classify the information. If there is significant doubt about the appropriate level of classification with respect to information that is being classified, it shall be classified at the lower classification of the levels considered.

(d) Information shall not be classified in order to conceal inefficiency, violations of law, or administrative error; to prevent embarrassment to a person, organization, or agency; to restrain com-

petition; or to prevent or delay release of information that does not require protection in the interest of national security. Information that has been declassified and released to the public under proper authority may not be reclassified.

(e) Information that has not previously been disclosed to the public under proper authority may be classified or reclassified after the Department has received a request for it under the Freedom of Information Act (5 U.S.C. 552), the Privacy Act of 1974 (5 U.S.C. 552a), or the mandatory review provisions of § 17.31. When it is necessary to classify or reclassify such information, it shall be forwarded to the Department Security Officer and classified or reclassified only at the direction of the Attorney General, the Deputy Attorney General, or the Assistant Attorney General for Administration.

(f) Compilations of items of information that are individually unclassified may be classified if the compiled information reveals an additional association or relationship that meets the standards for classification under Executive Order 12958 and that is not otherwise revealed in the individual items of information.

§ 17.23 Emergency classification requests.

(a) Whenever any employee, contractor, licensee, certificate holder, or grantee of the Department who does not have original classification authority originates or develops information that requires immediate classification and safeguarding, and no authorized classifier is available, that person shall:

(1) Safeguard the information in a manner appropriate for its classification level;

(2) Apply the appropriate overall classification markings; and

(3) Within five working days, securely transmit the information to the organization that has appropriate subject matter interest and classification authority.

(b) When it is not clear which Department organization would be the appropriate original classifier, the information shall be sent to the Department