



## Department of Energy

Washington, DC 20585

January 7, 2011

Mr. Steven Aftergood  
Project on Government Secrecy  
Federation of American Scientists  
1725 DeSales Street NW, Suite 600  
Washington, DC 20036

Re: Freedom of Information Act Request for HQ-2011-00259-F

Dear Mr. Aftergood:

This is in response to your request to the Department of Energy (DOE) under the Freedom of Information Act (FOIA). Your request was received at DOE on November 15, 2010, and assigned case number HQ-2011-00259-F.

You requested "copies of Department of Energy records that document the Department's response to the Fundamental Classification Guidance Review to date."

The Office of Classification, within the Office of Health, Safety and Security, searched its files and found a total of eight documents responsive to the request. These documents have been determined to be unclassified and are being provided to you in their entirety.

Pursuant to 10 CFR 1004.8, the adequacy of a search may be appealed in writing within 30 calendar days of receipt of a letter denying any portion of the request. The appeal should be made to the Director, Office of Hearings and Appeals, HG-1, Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585-1615. The written appeal, including the envelope, must clearly indicate that a Freedom of Information Appeal is being made. The appeal must contain all other elements required by 10 CFR 1004.8. Judicial review will, thereafter, be available to you: (1) in the district where you reside; (2) in the district where you have your principle place of business; (3) in the district where the DOE records are situated; or (4) in the District of Columbia.

If you require additional information, please contact Mr. Fletcher Whitworth, of my staff, at (301) 903-3865.

Sincerely,

A handwritten signature in black ink, appearing to read "Andrew P. Weston-Dawkes".

Andrew P. Weston-Dawkes  
Director  
Office of Classification  
Office of Health, Safety and Security

Enclosure

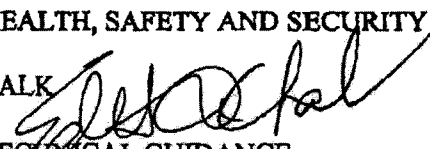




**Department of Energy**  
Washington, DC 20585

November 4, 2010

**MEMORANDUM FOR ANDREW P. WESTON-DAWKES**  
**DIRECTOR**  
**OFFICE OF CLASSIFICATION**  
**OFFICE OF HEALTH, SAFETY AND SECURITY**

**FROM:** EDITH A. CHALK  
**DIRECTOR**   
**OFFICE OF TECHNICAL GUIDANCE**  
**OFFICE OF CLASSIFICATION**

**SUBJECT:** National Security Information, Fundamental  
Classification Guidance Review Charter

In reply, please refer to HS92-10-N1-0079.

Attached for your review is the final draft of the National Security Information, Fundamental Classification Guidance Review charter. Please provide your approval by signing the signature page.

Attachment

cc: Donna Nichols, HS-92  
Robert Cooke, HS-92  
Glen Krc, HS-92  
Johnnie Grant, HS-92  
Thomas Callander, HS-92  
Gregory Gannon, HS-92  
Troy O'Baker, HS-92  
Richard Lyons, HS-92  
Joseph Stoner, HS-92  
David Hix, HS-92  
Nick Prospero, HS-91  
Ken Stein, HS-93



Charter for the Department of Energy's  
National Security Information Fundamental Classification Guidance Review

**PURPOSE:** The President of the United States has enacted into law Executive Order (E.O.) 13526, *Classified National Security Information*, dated December 29, 2009, which directs that a Fundamental Classification Guidance Review (FCGR) be conducted within two years of the effective date of the E.O., June 29, 2010. The Order states that Agency heads shall complete on a periodic basis a comprehensive review of the agency's classification guidance, particularly classification guides, to ensure the guidance reflects current conditions and to identify classified information that no longer requires protection and can be declassified.

**BACKGROUND:** To comply with the requirements of the E.O., the Department of Energy (DOE), with the Office of Classification serving as facilitator, will conduct the National Security Information (NSI) FCGR. All DOE/National Nuclear Security Administration (NNSA) approved classification guidance, pursuant to the E.O., will be reviewed. The NSI FCGR will include an evaluation of such information to determine if the standards for classification (as stated in the E.O., Section 1.1) will continue to be met, taking into account a current assessment of likely damage that may occur following unauthorized disclosure of the information. As required in Section 1.9 of the E.O. and at the conclusion of the NSI FCGR, the Secretary of Energy will provide a report summarizing the results of the classification guidance review to the Director of the Information Security Oversight Office (ISOO).

**SCOPE:** The NSI FCGR will be a systematic and comprehensive review of DOE's classification policy to identify NSI which continues to require protection, with the intent that all other information may be declassified and, where possible, made available to the public. All NSI within DOE's responsibility will be included. The review will encompass over 60 Headquarters (HQ) guides and 7 HQ Classification Bulletins. The NSI FCGR will also provide an evaluation of how NSI guidance topics are used by classifiers, and whether the intent of the guidance topics have been met as evidenced in derivative classification decisions.

**PRODUCT:** The NSI FCGR will be completed within the two year timeframe as required by the E.O., and will be accomplished by formation of multiple subject area review teams ("Working Groups"). The NSI FCGR will be conducted by knowledgeable personnel, including original classification authorities and agency subject matter experts, to bring a broad range of perspectives into the review. All Working Groups will report their progress and results to a Steering Committee, which will ensure consistency in approach and reporting. A basic project schedule is included in Appendix A.

Results that involve proposed NSI declassification actions will be submitted to the proper authorities via the Office of Classification for review and concurrence. Results will be compiled in a report to the Secretary that will detail the recommendations and supporting rationale. The report will be unclassified (with a classified annex) so that it may be made available to the public for informational purposes.

PROCESS:

Preparation of Classification Guidance Topics for Review – Office of Classification personnel will review all current guidance documents (guides, guidelines, bulletins) and extract the NSI topics. Topics will then be categorized, or “binned” in one or, where necessary, multiple subject areas. These subject areas will loosely align with E.O. 13526 classification categories (intelligence activities, foreign Government information, etc.) but may include more detailed division where practicable (e.g., Technical Surveillance Counter-measures (TSCM) as a subset of national security system capabilities). The total number of topics in a given subject area for all guidance documents will provide initial indications of the relative complexity of the subject area and review duration. For example, multiple teams may be required to review topics that address a variety of science and technology topics.

Steering Group Actions - The NSI FCGR will be initiated by the Steering Group, which will develop common review objectives to supplement the basic guidelines identified within the E.O., and will also ensure consistency of final product from each subject area Working Group. The Steering Group will consist of senior classification and program personnel from Headquarters and the field. The Steering Group will ensure development of a Working Group introductory briefing, which will include information on the background of the E.O., the guidance review process and Group communication structure. This briefing will be developed within the Office of Classification and will include informational items and learning objectives identified in Appendix B.

The Steering Group will identify a specific Subject Area (or partial Subject Area, such as Protective Force response) for formation of a pilot Working Group. The pilot Working Group will follow the basic procedure outlined by the Steering Group, with the knowledge that feedback from the pilot group will be used to adjust the guidance review process and communication structure to be provided to the remaining Working Groups.

Formation of Subject Area Working Groups - Each Working Group will have a chair and approximately six members who will be chosen for their subject area expertise in relevant technology and policy areas. Most members will represent DOE/NNSA programs and classification offices (field and HQ). One of the members of each Working Group will be a senior classification expert in the subject area. Where necessary, personnel from other agencies will be invited to participate in the Working Group. The Working Group member selection is critical to the success of the NSI FCGR effort. In addition, the progress of each working group will be monitored by a member of the Steering Group. Although participation as a Working Group member is voluntary, the member's home organization will be expected to strongly support each member's participation for that organization. It is expected that multiple Working Groups will be required for the areas of Science/Technology (X4), and safeguards & security systems (X8), and vulnerabilities (X8).

Operating Principles of Subject Area Working Groups - Based on the common review objectives and process structure/schedule provided by the Steering Group, each Working Group will conduct the review. Each Working Group is expected to review “difficult topics” (i.e., guidance topics that are suspected of inconsistent or incorrect application by classifiers), and to make recommendations for revised topic wording in the Working Group reports. Depending on the subject area complexity and size, interim status reports to the

Steering Group may be required. In general, a monthly status report is expected to be adequate. At any time during the review, additional direction may be sought from the Steering Group.

For DOE/NNSA owned information, each Working Group will identify the basic essential information that is being protected through classification, and why it should be protected under the E.O. The information being protected may range from details of some future activity, the vulnerabilities or capabilities of a security system protecting a nuclear weapon or Special Nuclear Material in storage, or information related to a foreign nuclear program that was provided in confidence to the U.S. Government.

The Working Group will then analyze the classification keystone protected by a topic, and then make a recommendation whether such information should retain current classification; cite a specific X exemption from automatic declassification at 25 years; or to propose a downgrade, upgrade, or declassification action for the information addressed by the guidance topic. The Working Group is to consider the following in its analysis:

- The balance between risking release of the information versus the cost of protecting the information. Assuming that the information meets the requirements of E.O. 13526, the cost of continuing to protect a piece of information may outweigh the benefit of protection. Even though a prior analysis may have concluded that the balance favored classification, this E.O. 13526 review will ensure consideration of acceptance a higher level of risk.
- If the information can be declassified, whether the information meets the criteria for protection as Sensitive Unclassified Information (e.g., Official Use Only or Unclassified Controlled Nuclear Information).
- Whether a topic, currently showing an exemption from automatic declassification at 25 years, may be more appropriately assigned a specific number of years for protection.

Supporting rationale to justify each recommendation must be provided. For information recommended to remain classified, a description of the damage to the national security must be considered, in the event of a future classification challenge. Each topic will be verified to have clear and understandable declassification instructions, and where based on a future event, such an event is reasonable, definite, and foreseeable. The Working Group will document their recommendations and supporting rationale in both periodic and final reports to the Steering Group. Should a Working Group member strongly disagree with a position taken by the team, that member may issue a minority report to the Steering Group.

Subject Area Working Group Logistics - For purposes of schedule development, it is assumed that the duration of an individual Working Group (formation, topic/keystone review, rationale development, recommendation reporting) may range from one month (in the case of a narrowly-scoped subject area encompassing a small number of topics) to six months (for complex subject areas or those that will require other agency coordination). It is also assumed that

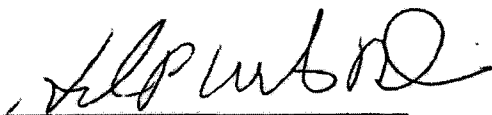
service on a Working Group will be a collateral duty for the members. To ensure adequate coverage of all Working Groups by Steering Group personnel, it is likely that Working Group engagement will be staggered across a 15-month period (remainder of 2010 and all of 2011).

Review of Other Agency Equities – In the event that the NSI topics in a classification guide under review do not protect DOE/NNSA equities (i.e., DOE/NNSA agrees to identify, mark, and protect information that may appear in a DOE/NNSA document, at the request of another Executive Branch agency), then the Steering Group may choose to delegate the conduct of the review to the owning Agency. In this case, the Steering Group will send background review information (from the Subject Area Working Group introductory briefing), along with a requested completion date, to the owning Agency.

Compilation and Reporting to ISOO – On a quarterly basis, the Steering Group will report to the Director, Office of Classification, the progress and status of the Subject Area Working Groups. When a Working Group substantially completes its review and provides a draft recommendation summary, the Steering Group will note completion of the review and compile the results for discussion with ISOO. Progress briefings to ISOO, and when required, to the Interagency Security Classification Appeals Panel (ISCAP), may occur periodically. Early in 2012, a compiled report will be drafted to include the results of all Working Group reviews. A final report will be prepared for issuance by the Secretary prior to the two year deadline.

Classification Guidance Revision – As Working Groups complete their reviews and their recommendations have been accepted by Program Heads and the Director, Office of Classification, and where required, ISCAP, necessary revision to NSI topics contained in active classification guides will be the responsibility of the Office of Technical Guidance. In instances where significant revision is needed, Classification Bulletins may be issued in order to more rapidly promulgate the revisions to the derivative classifiers and derivative declassifiers.

Approved by:



Andrew P. Weston-Dawkes  
Director  
Office of Classification  
Office of Health, Safety and Security

Date: 11/24/10

**Attachments:**

**Appendix A - Proposed NSI Fundamental Classification Policy Review Schedule and Milestone Dates**

**Appendix B – Topical Areas for Development in the NSI FCPR Working Group Introductory Briefing Package**

### Appendix A - Proposed NSI FCGR Schedule and Milestone Dates

Task Identification	Target Date	Comments
1. Complete NSI topic binning process	5/28/10 Complete	Action complete; topic bins available on c-LAN portal.
2. Provide analysis of binning, suggest subject area divisions, suggest pilot Subject Area Working Group to Steering Group	7/8/10	
3. Obtain approval of FCPR Charter	HS-90 Approval	
4. Identify and finalize points-of-contact in program offices (for Steering Group and for Working Group assignments)	HS-90 Approval	
5. Identify Steering Group members	HS-90 Approval	
6. Form pilot Working Group; provide process and communication structure information to pilot group	Approval + 2 weeks	Pilot group active for 3 weeks – to report results back to Steering Group at +3 weeks
7. Review results with Steering Group and make adjustments to process and communication structure	Approval + 6 weeks	
8. Issue communication to program and field offices for Working Group assignments	Approval + 8 weeks	Request concurrence from supervisor for Working Group assignments at +2 weeks
9. Identify members and begin formation of Working Groups	Approval + 10 weeks	Include estimated working group timelines for start, intermediate reports, final report to Steering Group
10. Have all Working Groups finalized and begin analysis	Approval + 12 weeks	Final reports to Steering Group as Working Group completes recommendations and rationale
11. Quarterly status reports to Steering Group	1/1/11 and quarterly until 1/2012	ISOO updates and ISCAP approvals throughout, as necessary
12. Prepare final report to ISOO	2Q12	



## Appendix B - Topical Areas for Development in the NSI FCPR Working Group Introductory Briefing Package

- E.O. 13526 Background Information, including classification categories and exemptions to automatic declassification, as described in Sections 1.4 and 3.3 of the E.O.
- Describe why the review is being conducted, what will happen to documents classified under new E.O., and what will happen to documents classified under prior EOs
- The NSI FCGR process workflow, including a basic timeline with intermediate milestones for each Working Group
  - Review declassification instruction preference process described in the E.O. implementer –
    - date or event < 10 years from classification, coincident with lapse of sensitivity
    - date or event 10 years from classification, coincident with lapse of sensitivity
    - date or event not to exceed 25 years from classification
    - If information is thought to be exempt from automatic declassification, identification of the appropriate X code(s) – normally one, no more than two X codes should be cited
    - If none of the choices above are appropriate and intel/WMD is relevant, assignment of X code 50X1-HUM or 50X2-WMD
    - Use of classification duration extension (25 years from date of record if original date not reached; reclassify; both by original classifier)
- Summary of the current NSI-related topics contained in CG-HR-3, *Historical Records Declassification Guide*, which serves as the primary basis for topics in other classification guides that exempt DOE NSI from declassification at 25 years.
- Describe the review process to be used by the Working Group:
  - Determine whether or not the information is a DOE/NNSA equity, and is then classifiable by DOE derivative classifiers
  - Discussion by the Working Group to identify or describe damage to national security that would be caused by release of the protected information - will HS-90 be able to defend position in case of a challenge?
  - What is the basic fact that the topic is protecting? Is it merely a pointer back to the same topic in a different guide?
  - Is each topic correctly and clearly written?
  - Is the topic adequate? Are there known issues with use of the topic by DCs?
  - Are the declassification instructions clearly written and achievable?
- Provide examples of good and bad declassification instructions
- How to define the need for an X code (need a narrowly defined area of information; specifics associated with something non-obvious can be identified and placed in metadata when the guide is revised; does the information really require classification more than 25 years in the future?)
- Provide a reporting format for Working Group team report-back to the Steering Group, both for status reports and proposed changes; requests for clarification, and reporting of areas of disagreement
- Discussion on assignment of multiple X codes
- Process to be followed if another “75 year” case is identified
- Identification of which current topics, by guide, the working group is expected to review