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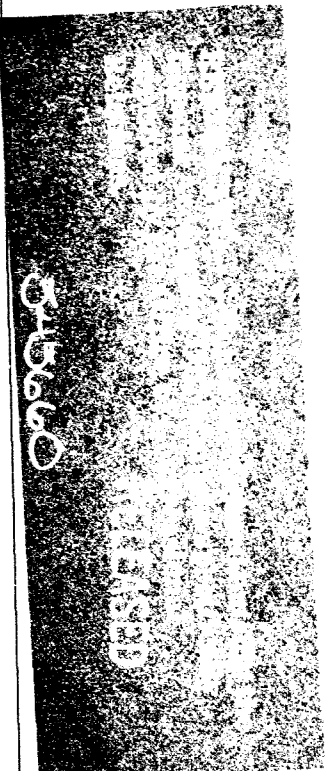
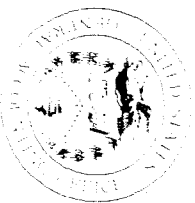
GAO

Report to the Chairman, Subcommittee on
Federal Services, Post Office, and Civil
Service, Committee on Governmental
Affairs, U.S. Senate

June 1989

INFORMATION SECURITY

Controls Over Unofficial Access to Classified Information



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United States
General Accounting Office
Washington, D.C. 20548

National Security and
International Affairs Division

B-234031

June 8, 1989

The Honorable David Pryor
Chairman, Subcommittee on Federal
Services, Post Office, and Civil
Service
Committee on Governmental Affairs
United States Senate

Dear Mr. Chairman:

As you requested, we reviewed agencies' procedures and practices for granting historians and former presidential appointees access to classified documents. In addition, you asked us to review the arrangements made for the disposition of classified papers related to the tenures of former Secretary of Defense Weinberger and former Secretary of State Shultz. As agreed, the results of our work on this second matter will be included in a separate report, and only limited information on the status of the arrangements is contained in this report. Appendix I contains the details of our review on access by historians and former presidential appointees.

Executive Order 12356, dated April 2, 1982, "prescribes a uniform system for classifying, declassifying, and safeguarding national security information." The order, like its predecessors, limits individuals' access to classified information. Federal agencies may grant access only if they have determined that the individuals are trustworthy and such access is essential to authorized government purposes. However, agencies may waive the requirement for historical researchers and former presidential appointees if the agencies determine that access is consistent with the interest of national security, take steps to protect classified information from unauthorized disclosure or compromise, and ensure that the information is safeguarded in a manner consistent with the order.

Executive Order 12356 assigns responsibility to the Director, Information Security Oversight Office, to develop governmentwide implementing directives and provides for agencies to promulgate regulations implementing the order and directives. The Oversight Office's Directive No. 1 does not provide any guidance on access by historians and former presidential appointees to ensure appropriate safeguards in the agencies' systems.

The number of researchers and former presidential appointees who were authorized access to classified information was relatively low during 1986 and 1987. In addition, we did not identify any major problems, such as compromises of classified data, because of accesses that were granted.

Procedures for Access Vary

The lack of guidance for granting access to historians and former presidential appointees in the Oversight Office directive has resulted in differences in agency regulations. The directive did not

- identify the requirements for an individual to be considered a “former presidential appointee” or “historical researcher” or
- establish definitive security standards regarding the protection of classified information that is released to researchers and appointees.

The Department of State’s regulations for itself and four related agencies provide for personal research assistants working for a former presidential appointee to be given the same degree of access as the appointee. The Department of Defense (DOD) regulations do not provide for personal research assistants. However, according to a DOD official, in practice these assistants would be given the same degree of access as the former appointee, thus resulting in no difference between the agencies’ practices.

We also identified differences in agency regulations governing the level of classified information to which historical researchers may be given access. For example, an Air Force regulation limits historical researchers’ access to information at the secret level and below, while the Department of Transportation regulation permits historical researchers access to top secret, intelligence, and communications security information.

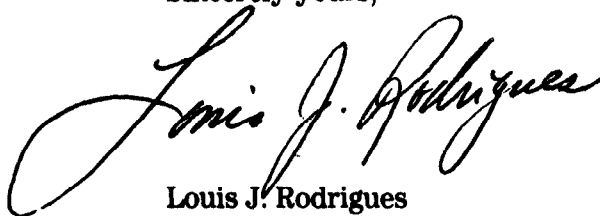
Conclusion

Although we found no adverse consequences because of the differences in agency procedures, situations could arise when historical researchers could be granted access to classified information at one agency, but be denied access to similar information at another agency. According to an Oversight Office official, the Office has proposed revisions to various sections of Executive Order 12356 to deal with these types of inconsistencies and other security issues. We are not making any recommendations.

Unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from its issue date. At that time, we will send copies to the Secretaries of Defense and State; the Archivist of the United States, the National Archives and Records Administration; the Director, Information Security Oversight Office; the Librarian of Congress; and other interested parties upon request.

GAO staff members who made major contributions to this report are listed in appendix III.

Sincerely yours,

A handwritten signature in cursive script that reads "Louis J. Rodrigues". The signature is written in black ink and is positioned above the printed name and title.

Louis J. Rodrigues
Director, Logistics Issues

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Abbreviations

DOD	Department of Defense
GAO	General Accounting Office

Access to Classified Information by Historical Researchers and Former Presidential Appointees

Since 1940, various executive orders have prescribed the policies governing executive branch agencies' protection of classified information. The policies cover such areas as classification, handling, and dissemination. Prior to 1959, classified information could not be disseminated to anyone whose official duties did not require access to the information, often referred to as the "need-to-know" policy. In 1959, Executive Order 10816 authorized access to classified information by historical researchers, and in 1972, Executive Order 11652 authorized access by former presidential appointees. These two exceptions to the need-to-know policy have been continued in subsequent executive orders.

Section 4.3 of Executive Order 12356, effective August 1, 1982, provides current policy regarding the exceptions to the need-to-know policy. According to section 4.3, agencies originating classified information may authorize access to such information by persons who

- are engaged in historical research projects or
- previously have occupied policy-making positions to which they were appointed by the President.

The order further provides that such access may be granted only if the agency originating the classified information

- determines in writing that access is consistent with the interest of national security;
- takes appropriate steps to protect classified information from unauthorized disclosure or compromise, and ensures that the information is safeguarded in a manner consistent with Executive Order 12356; and
- limits the access granted to former presidential appointees to items that the person originated, reviewed, signed, or received while serving as a presidential appointee.

The order makes the Director, Information Security Oversight Office, responsible to develop directives, review agency regulations, and oversee agency compliance. The Director issued Directive No. 1, effective August 1, 1982; however, the directive, although providing guidance on various information security matters, does not provide any guidance relative to historical researchers and former presidential appointees.

The order also provides for agencies that originate or handle classified information to promulgate implementing regulations. Nineteen agencies' regulations contain provisions relative to historical researchers and former presidential appointees. Some of the regulations merely paraphrase

**Appendix I
Access to Classified Information by
Historical Researchers and Former
Presidential Appointees**

section 4.3 of Executive order 12356, and others contain more specific requirements for implementing the order. For example, DOD's regulation for access by historians and former appointees requires the individuals to have a security clearance and sign a nondisclosure agreement, limits access to the specific categories for which approval is obtained, requires the classified information to remain in the custody of DOD or the National Archives and Records Administration, and requires government review of the individual's notes and manuscripts.

**Clearances Granted
Historical Researchers and
Former Presidential
Appointees**

In 1988, three congressional committees sent a questionnaire that addressed general information and personnel security matters affecting federal employees to 51 executive branch agencies and offices.¹ The questionnaire included activity under section 4.3 of Executive Order 12356 for 1986 and 1987. Of the 48 responses received, only 9 agencies and offices reported program activity during the 2-year period for historical researchers, former presidential appointees, or both. According to the responses, DOD accounted for 58 percent of the clearances issued to historical researchers during 1986 and 1987, and the National Security Council accounted for 19 percent. Of the historical researchers who had clearances as of December 31, 1986 and 1987, DOD accounted for 85 and 89 percent, respectively, and the Council accounted for 9 percent during both years. Table I.1 shows the number of security clearances issued to historical researchers in 1986 and 1987 and the number of clearances at the end of each year.

¹ Responses to the questionnaire were compiled in our report, Information Security: Update of Data on Employees Affected by Federal Security Programs (GAO/NSIAD-89-56FS, Mar. 7, 1989).

**Appendix I
Access to Classified Information by
Historical Researchers and Former
Presidential Appointees**

Table I.1: Historical Researchers With Security Clearances^a

	Individuals issued clearances		Individuals with clearances as of December 31	
	1986	1987	1986	1987
Department of Defense	29	13	68	78
National Security Council	6	8	7	8
National Aeronautics and Space Administration	3	3	3	2
National Archives and Records Administration	2	4	2	0
Arms Control and Disarmament Agency	1	1	0	0
Peace Corps	0	2	0	0
Department of the Treasury	1	0	0	0
Total	42	31	80	88

^aThe table does not include individuals employed by agencies as historians because their official duties require the clearances and accesses necessary to chronicle agency histories.

The Department of State accounted for 65 percent of the clearances issued to former presidential appointees and their research assistants during 1986 and 1987. Of the former presidential appointees who had clearances as of December 31, 1986 and 1987, State accounted for about 57 and 67 percent, respectively. Table I.2 shows the number of security clearances issued to former presidential appointees in 1986 and 1987 and the number of clearances at the end of each year.

Table I.2: Former Presidential Appointees With Security Clearances

	Individuals issued clearances		Individuals with clearances as of December 31	
	1986	1987	1986	1987
Department of State	8	10	8	10
National Security Council	2	2	2	2
Nuclear Regulatory Commission	1	1	1	2
Department of Defense	0	0	2	0
National Archives and Records Administration	0	2	0	0
Arms Control and Disarmament Agency	1	1	0	0
Department of the Treasury	0	0	1	1
Total	12	16	14	15

**Denied Clearances for
Historical Researchers and
Former Presidential
Appointees**

Three historical researchers were denied security clearances in 1986 and 1987. The National Security Council denied one in 1986 and DoD denied two in 1987. Agencies reported no denials of security clearances to former presidential appointees. The questionnaire did not request data on the reasons for denials.

**Use of the Terms
“Former Presidential
Appointee” and
“Historical
Researcher”**

Executive Order 12356 and its implementing directive do not further explain when an individual should be considered a “former presidential appointee” or “historical researcher.” Consequently, agency regulations vary in their use of these terms. For example, the Department of State’s regulations provide that personal assistants of former presidential appointees acting in their behalf may be given the same degree of access as the appointees.

The number of researchers and former presidential appointees who were authorized for access to classified information during 1986 and 1987 was relatively low. In addition, we did not identify any major problems such as compromises of classified information because of accesses that were granted. However, we found that the lack of guidance for granting such accesses in the Information Security Oversight Office’s implementing directive resulted in differences in agency regulations.

**Regulations Are Not
Uniform**

Whereas some of the agencies’ regulations paraphrase the order’s provision dealing with presidential appointees, State’s Foreign Affairs Manual specifically includes personal assistants of former presidential appointees, as follows:

“Any individual or research assistant requiring access in behalf of the intended recipient must also meet all of the above conditions [such as determination of trustworthiness and agreement to safeguard information and to prepublication review]. Such personal assistants must be authorized to be working for the former appointee exclusively and not gathering information for publication on their own.”

The manual applies to the Department of State, Agency for International Development, U.S. Information Agency, Arms Control and Disarmament Agency, and Overseas Private Investment Corporation.

DOD regulations do not specifically include research assistants within the term former presidential appointee. However, according to a DOD official, in practice, research assistants—who may assist a former presidential appointee—would be considered historical researchers and would be given the same degree of access afforded a former presidential appointee.

Consistency in Access to and Protection of Classified Information

The executive order and its implementing directive do not provide definitive guidance for the level of classified information available to historians and former presidential appointees or for the protection of such information once it is made available to them. The order states, without further explanation, that access may be granted only if the originating agency determines in writing that such access is consistent with the interest of national security. The order states that agencies should take “appropriate steps” to protect classified information and ensure that the information is safeguarded in a manner consistent with the order. Since the order does not further explain what constitutes “appropriate steps,” agencies are operating under different standards. The Oversight Office’s implementing directive also does not explain the intended meaning of these requirements.

Different Levels of Access for Historians

The order allows agencies to establish procedures for access. Consequently, agencies have different standards. For example, the Air Force regulation limits historical researchers’ access to information at the secret level and below, while the Department of Transportation’s regulation permits historical researchers’ access to top secret, intelligence, and communications security information. Also, the Air Force regulation only permits access by historians to records that are 10 or more years old. Other agencies’ regulations do not specify the age of the records that may be made available to historians.

Control of Departing Presidential Appointees' Classified Papers

Agencies apply the executive order to presidential appointees who are leaving the government and who are making arrangements for the disposition of files and other documentary materials accumulated during their federal service, which includes both their personal papers² and federal records.³ Although these appointees may remove their personal papers and copies of certain federal records, the Oversight Office has advised agencies that classified information, including extra copies, is not the personal property of departing officials and cannot be removed from government control.

Departing presidential appointees therefore cannot remove from government control any records or other documents that may contain classified information. The Oversight Office has not formally defined, however, what constitutes government control. As a result, different types or degrees of government control may exist over such classified information. Two cases involving the former Secretaries of State and Defense illustrate this situation.

- The Department of State transferred copies of former Secretary of State Shultz's papers, including classified documents, to the Federal Records Center in San Bruno, California. Under current arrangements, some papers, including classified material, will be temporarily transferred from the Center to the Hoover Institution on War, Revolution and Peace at Stanford, California, so that the former Secretary may have access to them. Although the Institution is not a government facility, it is authorized by DOD to store classified information as part of the Defense Industrial Security Program. A State employee at the Institution will be responsible for control of the classified information.
- Former Secretary of Defense Weinberger deposited his personal papers, including classified documents, with the Library of Congress. However,

²The laws and regulations governing the management and disposal of federal records generally do not apply to personal papers, which are defined as: "Papers of a private or nonofficial character which pertain only to an individual's personal affairs that are kept in the office of a Federal official . . ." (see 36 C.F.R. Section 1222.20 and 1228.106). The official is required to clearly designate such papers as nonofficial and must keep them separate from the official records of his office. Official records are public records and belong to the government rather than to the official. Copies of documents preserved only for convenience of reference are not considered official records.

³The disposition of files and documentary materials accumulated within an agency is governed by the Records Disposal Act of 1943, as amended, which defines the term "records" as including ". . . all books, papers, maps, photographs, machine readable materials, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Government or because of the informational value of data in them" (see 44 U.S.C. 3301, as amended).

his agreement with the Library provides that no one can be given access to his papers without his written permission and the requisite security clearance.

We are continuing to review these two cases and, as requested, will include the results in a later report.

Air Force Program Temporarily Discontinued

The Air Force had the most active program for historical researchers of the federal agencies handling classified information, but discontinued it in August 1987. According to Air Force officials, the service plans to reinstate the program as soon as it has coordinated internal procedural changes. During 1986 and 1987, the Air Force accounted for 42 of the 73 clearances issued to historical researchers by federal agencies and offices. As of December 31, 1987, 75 of the 88 active security clearances held by historical researchers had been granted by the Air Force.

Officers in the Magazines and Books Branch, Office of Public Affairs, were responsible for managing the program. However, according to Air Force officials, the Air Force discontinued its program for historical researchers in August 1987 because of a reorganization that eliminated the branch and discontinued the program because of higher priority duties of the Office.

As requests for new or renewed accesses were received, the Air Force told requesters that it had discontinued the program. The Air Force told at least one requester to submit a request under the Freedom of Information Act to continue research started under section 4.3 of Executive Order 12356.

According to an Air Force official, even though the program had been formally abandoned, some researchers still received new or renewed clearances to initiate or continue historical research that the Air Force wanted pursued. Such research and writing by nongovernment historians meant that Air Force historians would not have to do it, according to the official.

Objectives, Scope, and Methodology

The Chairman, Subcommittee on Federal Services, Post Office, and Civil Service, Senate Committee on Governmental Affairs, asked us to review the government's procedures and practices for granting historians and former presidential appointees access to classified information.

The Chairman of the Subcommittee and the Chairmen, House Committee on Government Operations and House Committee on Post Office and Civil Service, sent a questionnaire to 51 executive branch agencies and offices and asked them to report, among other things, activity under section 4.3 of Executive Order 12356 for 1986 and 1987.¹ Of the 48 responses received, only 9 agencies and offices reported program activity. We visited or contacted officials of the following five, which accounted for about 90 percent of the reported activity in 1986 and 1987:

- Department of Defense
- Department of State
- National Archives and Records Administration
- National Aeronautics and Space Administration
- National Security Council

We visited the Information Security Oversight Office, the Carter Presidential Library, the Library of Congress, and two nongovernment activities—the American Historical Association and National Security Archive. Also, we reviewed agency procedures and practices and records.

Our review was directed primarily at the historical researchers and presidential appointees who were granted access to classified information. Another review covering, among other things, the removal of records by agency officials is in process and is being reported separately.

We conducted our review from February 1988 to March 1989 in accordance with generally accepted government auditing standards.

¹The questionnaire primarily solicited information relative to information and personnel security matters affecting federal employees.

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