

STUDENT GUIDE

CLASSIFICATION CONFLICTS AND EVALUATIONS

Lesson: Course Introduction

Course Overview

Welcome to the Classification Conflicts and Evaluations course. This course is designed for Students who desire to obtain a broad overview of the Classification Challenge process.

Additional training may be found at the Defense Counterintelligence and Security Agency, or DCSA, Center for Development of Security Excellence, or CDSE, web site: <https://www.cdse.edu/>. This site can be accessed through the Resources link.

Course Objectives

During this course, you will examine the processes for addressing classification challenges through the following topics:

- The process for formal challenges to classification decisions
- The role of the Interagency Security Classification Appeals Panel, or ISCAP, and
- The Mandatory Review Process

Classification Conflict

Conflicts may arise when individuals have a different perspective or opinion on a specific issue. Conflicts can also arise amongst varying organizations and agencies.

Classification conflict occurs when individuals, or agencies, do not agree upon a classification decision made by the Original Classification Authority, or OCA, with primary jurisdiction, regarding agency information.

For example, the Defense Intelligence Agency, or DIA, and the National Geospatial-Intelligence Agency, or NGA, are two of multiple government agencies that share intelligence information. When the DIA, as the OCA for the intelligence information under their purview, makes a classification decision regarding this information, the NGA may not agree with this decision. This disagreement is defined as a Classification Conflict.

Per Department of Defense, or DOD Manual 5200.01, Volume 1, DOD Information Security Program: Overview, Classification, and Declassification, the challenge to a classification decision occurs when one party has substantial cause to believe the information has been improperly or unnecessarily classified. This document can be accessed through the Resources link.

Levels of Classification

Information is determined to be classified based upon its potential to damage national security. In addition, information can be classified as Top Secret, Secret, or Confidential, based upon the magnitude of the perceived threat. On December 29, 2009, Executive Order, or E.O., 13526 - Classified National Security Information was signed defining the processes for classifying national security information.

Types of Classification Actions

Several classification actions can be taken to protect the integrity of information. These include:

- **Classification:** The requirement for classification of information occurs when the OCA determines the information must be protected from unauthorized disclosure, to ensure the safety of our national security, democratic institutions, citizens, and interactions with foreign entities.
- **Reclassification:** Classified information that has been previously declassified may be reclassified based upon changes in the potential for threat posed by the information. This process is subject to the provisions of Executive Order 13526, Ch. 1.7.5.1.
- **Declassification:** Information that has been previously classified may be, upon review, declassified if the information has been determined to no longer pose a threat to national security.
- **Regrade:** Regrading of classified information occurs when the classification level of information has been either upgraded or downgraded.
- **Re-evaluation:** In a situation when the integrity of information has been compromised the level of classification is re-evaluated to determine whether the classification should be continued, changed, or discontinued.

Lesson 1: Formal Challenge Process

Objective

In this lesson, you will examine the steps in the process for formal challenges to classification decisions.

Challenges to Classification

A challenge to a classification decision occurs when the holder of the information has substantial cause to believe the information has been improperly or unnecessarily classified.

Individuals should contact their Security Manager first before seeking out the OCA for additional investigation of these concerns.

Additional guidance is provided in DODM 5200.01, Volumes 1 – 3.

Types of Challenges

Challenges to classification decisions occur through either an informal or formal process based upon the level of investigation and escalation for review of the concern.

Informal Challenge

An informal challenge occurs at the department or organizational level. Agency heads of component commands are encouraged to investigate and address classification challenges within the organization prior to escalating the challenge to the formal process.

Formal Challenge

The formal challenge process, as described in DODM 5200.01, involves the disputing agency, all authorized holders of the information, and the OCA. An impartial, external review panel may also be employed. This process also follows specific parameters regarding time, artifacts, roles and responsibilities, and opportunities for appeals.

Formal Challenges must include sufficient description of the information being challenged to permit identification of the information and its classifier with reasonable effort. Also, the challenge must include the reason why the challenger believes the information is improperly or unnecessarily classified.

Roles and Responsibilities

The agency head overseeing the formal challenge process must adhere to the following guidelines:

- The agency must establish a defined process for mitigating formal challenges
- All records associated with the process must be documented, tracked, and archived
- The agency head must ensure that no retribution or retaliation is taken against individuals for presenting the classification challenge
- An impartial official or panel, external to the agency, may be employed
- Challengers have the right to appeal the decision, or denial of formal review, through the Interagency Security Classification Appeals Panel, or ISCAP, and
- The information subject to the challenge must remain at the level of classification until a decision is made regarding the challenge, or the determination is made to declassify the information.

Responses to Formal Challenges

Agencies have specific parameters for when they must respond to a formal challenge.

- The agency must provide a written response to the formal challenge within 60- days. If the agency is unable to respond fully, the agency must acknowledge the formal challenge, and provide an estimated date of response.
- The 60-day acknowledgement must indicate that if no response is provided by the agency within 120-days, the challenger has the right to forward the challenge to the ISCAP.
- If the information subject to the formal challenge has been challenged within the preceding two years, or is currently under review, the agency must respond with this status, and the component need not process the challenge.

Lesson Summary

This lesson examined the steps in the process for formal challenges to classification decisions through the following topics:

- Challenges to classifications
- Informal and formal challenges
- Roles and responsibilities through the formal challenge process
- Agency requirements
- Responses to formal challenges, and
- Response times

Lesson 1 Knowledge Check

Classification Conflicts are defined as:

- When a classified document does not contradict itself in terms of the classification markings.
- When 2 or more parties disagree over current classification of information.
- When the Executive Branch refuses to disclose classified information to Congress.
- When the department head disagrees with the agency head on matters of physical security.

Lesson 2: Role of the Interagency Security Classification Appeals Panel (ISCAP)

Objective

In this lesson, you will examine the role of the Interagency Security Classification Appeals Panel, or ISCAP, in the formal classification challenge process.

ISCAP

The ISCAP was created to provide the public and users of the classification system with a forum for further review of classification decisions. The ISCAP was created under Executive Order 12958, which was signed on April 17, 1995. Today, the ISCAP receives its guidance from Executive Order 13526.

The ISCAP is comprised of senior level representatives from the following offices:

- Department of Defense
- Department of State
- Department of Justice
- Office of Director of National Intelligence
- National Archives
- National Security Advisor, and
- The Executive Secretary, Director of Information Security Oversight Office, also known as ISOO.

Functions of the ISCAP

Executive Order 13526, Section 5.3 defines the critical functions of the ISCAP as:

- Classification Challenges
- Exemptions from Automatic Declassification
- Mandatory Declassification Review Appeals
- Inform Decisions, and
- File Series Exemptions

Automatic Declassification: The declassification of information based solely upon: The occurrence of a specific date or event as determined by the OCA; or the expiration of a maximum time frame for duration of classification established pursuant to Executive Order 13526, "Classified National Security Information," December 29, 2009.

Mandatory Declassification: Any individual or organization may request a declassification review of information classified pursuant to Executive Order 13526, "Classified National Security Information," December 29, 2009 or previous classified national security information orders.

Classification Challenges

Classification challenges are a review of decisions regarding formal challenges to classification decisions. Challengers may appeal to the ISCAP when the agency has not responded to a request for an internal appeal within 90-days, or provides no response to a formal challenge within 120-days.

Exemptions from Automatic Declassification

Exemptions from automatic declassification encompass the ability of the ISCAP to approve, deny, or amend requests for exemptions from automatic declassification.

Mandatory Declassification Review Appeals

Through the mandatory declassification review appeals process, the ISCAP reviews decisions regarding denial of declassification requests at the agency level.

Inform Decisions

The ISCAP appropriately informs senior agency officials and the public of final Panel decisions on appeals.

File Series Exemptions

The ISCAP makes decisions regarding agency requests to exempt a designated file series from automatic declassification at 25-years.

ISCAP Decisions

Agencies must fully cooperate with the decisions made by the ISCAP. Agencies can, however, appeal ISCAP decisions through the Assistant to the President for National Security Affairs.

Lesson Summary

This lesson examined the role of the ISCAP, in the formal classification challenge process, through the following topics:

- The comprising members
- Critical functions
- Appeals process for classification challenges
- Agency requirements for decisions from ISCAP, and
- Required appeals process for denials.

Lesson 2 Knowledge Check

The critical functions of ISCAP are:

- Exemptions from automatic declassification
- Preside over OCA classification reviews
- Mandatory declassification review appeals
- Classification challenges
- File series exemptions
- Establish original classification
- Inform agency officials of decision

Lesson 3: Mandatory Review Process

Objective

In this lesson, you will examine the Mandatory Review Process.

Mandatory Review

Mandatory review is conducted in response to requests for declassification of classified information. Any individual or organization may request a review for declassification.

Agencies will declassify previously classified information if it no longer meets the criteria defined in Executive Order 13526 and DOD Manual 5200.01.

Public Release of Automatically Declassified Documents

Declassified documents will not be released to the public until a public disclosure review has been conducted to determine if there are other reasons for preventing the release of the information per DOD Instruction 5230.29 Security and Policy Review of DOD Information for Public Release, The Freedom of Information Act or FOIA, The Presidential Records Act, and the Privacy Act of 1974.

Freedom of Information Act

The United States Freedom of Information Act or FOIA, ensures public access to U.S. government records. FOIA carries a presumption of disclosure: that the burden is on the government, not the public, to substantiate why information may not be released. Upon written request, agencies are required to disclose those records, unless they can be lawfully withheld from disclosure under one of the nine specific exemptions listed in the FOIA. This right of access is ultimately enforceable in federal court.

Privacy Act of 1974

The Privacy Act, passed on December 31, 1974, serves as a companion to the United States Freedom of Information Act or FOIA. The act states, in part: "No agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains..."

Mandatory Review Guidelines

Any individual may request a review for declassification, provided that:

- The request describes the material or document with enough detail to allow it to be located with a reasonable amount of effort.
- The information is not exempt from search and review under the Central Intelligence Agency, or CIA, Information Act.
- The information has not been reviewed for declassification within the past 2-years.

The Department of Defense, or DOD, component may refuse to confirm or deny the existence, or non-existence, of the requested information if the fact of its existence, or non-existence, is classified.

The agency head overseeing the mandatory review process must adhere to the following guidelines:

- The agency must establish a defined process for promptly responding to requests for Mandatory Review.
- The agency must notify the OCA and all associated authorized holders of the information of the review request.
- All records associated with the process are classified until declassification.
- Information will be declassified if the information no longer meets the standards for classification.
- Declassified information is released to the requestor, unless the withholding is subject to law, such as the Freedom of Information Act, or FOIA, or Privacy Act of 1974.
- Associated Military and DOD components shall make a final determination within 1-year from the date of receipt of the review request.
- Interagency Review Agreements should be established to ensure adherence to the mandatory review process and time requirements.
- The OCA may reclassify portions of the information if not able to wholly declassify, and
- Requestors have the right to appeal the decision, or denial of formal review, through the ISCAP.

Exceptions

The Central Intelligence Agency, or CIA, Information Act of 1984, through Section 704, defines specific information as exempt from the mandatory review process. DOD Manual 5200.01 defines Foreign Government Information, or FGI, and information originating from an incumbent Presidential administration as exempt from mandatory review.

Exemptions by Director of Central Intelligence

Central Intelligence Agency, or CIA, operational files may be exempted by the Director of Central Intelligence from the provisions of Section 552, Title 5 of FOIA, which require publication or disclosure, or search or review.

Exemption for Foreign Government Information (FGI)

The Department of Defense must make every effort to safeguard foreign government information and ensure the information is not subject to downgrade or declassification without prior consent from the originating government. DOD officials may consult with the associated foreign government, or seek additional guidance from the United States Department of State. Prior to declassification, officials must ensure that no treaty or international agreement is in place, mitigating the classification of the FGI.

Exemption for Presidential Incumbent Information

Information originated by the incumbent President, staff, committees, commissions, boards, or other appointed entities within the Executive Office that serve to advise and assist the incumbent President is exempt from mandatory review.

Lesson Summary

This lesson examined the Mandatory Review process through the following topics:

- The purpose of mandatory review
- The guidelines for individuals and agencies through the mandatory review process
- Agency requirements for the mandatory review, and
- Exceptions to the mandatory review process

Lesson 3 Knowledge Check

The guidelines for the Mandatory Review process are:

- Establish a process for promptly responding to requests
- Must declassify FGI upon receipt
- Information declassified if no longer meets standards for classification
- Components must make final determination within 1-year of request
- OCA may declassify portions of the information
- Must notify OCA and all associated authorized holders of review
- All records are classified until declassification
- Declassified information may be released to requestor, unless unlawful
- Interagency Review Agreements should be established
- Right to appeal decision or denial through ISCAP

Course Summary

This course examined the processes for addressing challenges to classification decisions through the following topics:

- The process for formal challenges to classification decisions
- The role of the ISCAP, and
- The Mandatory Review process

KNOWLEDGE CHECK ANSWER KEY

Lesson 1 Knowledge Check

Classification Conflicts are defined as:

- When a classified document does not contradict itself in terms of the classification markings.
- **When 2 or more parties disagree over current classification of information.**
- When the Executive Branch refuses to disclose classified information to Congress.
- When the department head disagrees with the agency head on matters of physical security.

Lesson 2 Knowledge Check

The critical functions of ISCAP are:

- ✓ **Exemptions from automatic declassification**
- Preside over OCA classification reviews
- ✓ **Mandatory declassification review appeals**
- ✓ **Classification challenges**
- ✓ **File series exemptions**
- Establish original classification
- ✓ **Inform agency officials of decision**

Lesson 3 Knowledge Check

The guidelines for the Mandatory Review process are:

- ✓ **Establish a process for promptly responding to requests**
- Must declassify FGI upon receipt
- ✓ **Information declassified if no longer meets standards for classification**
- ✓ **Components must make final determination within 1-year of request**
- ✓ **OCA may declassify portions of the information**
- ✓ **Must notify OCA and all associated authorized holders of review**
- ✓ **All records are classified until declassification**
- ✓ **Declassified information may be released to requestor, unless unlawful**
- ✓ **Interagency Review Agreements should be established**
- ✓ **Right to appeal decision or denial through ISCAP**