

To: Director of National Intelligence, James Clapper
Director of the Central Intelligence Agency, David Petraeus
Director of the Information Security Oversight Office, John Fitzpatrick

February 23, 2012

Re: CIA Regulation change to 32 CFR Part 1908 allowing the Agency to charge requesters as high as \$72 per hour for Mandatory Declassification Review requests.

To whom it may concern:

We the undersigned would like to call to your attention an alarming regulation that the Central Intelligence Agency entered into the Federal Register on 23 September 2011. Finalized without any notice for public comment, this regulation could cut off access to the most effective tool the public can use to request declassification of the CIA's secret documents, the Mandatory Declassification Review (MDR) program.

The regulation states that declassification reviews will now cost requesters up to \$72 per hour, even if no information is found or released. The public must now also agree to pay a minimum of \$15 in duplication fees. Throughout the government, and previously at CIA, MDR fees are commensurate to FOIA fees. Under FOIA, Congress stipulated that public interest, educational, journalism, and other fee waivers must be granted, when applicable under the statute. Furthermore, agencies must forfeit their right to collect some FOIA processing fees when they miss their processing deadline.

The effect of the CIA's new policy will be to price the public out of submitting MDR requests, a result not at all consonant with Obama Administration transparency policy in general or its declassification policy under Executive Order 13,526 in particular. The MDR process is a popular and successful tool for researchers, historians, public interest advocates and others, in part because of the independent accountability and oversight the program provides. Unlike with FOIA requests, if an agency fails to declassify and release the information under the MDR process, requesters can appeal the agency's decision to the Interagency Security Classification Appeals Panel (ISCAP) for independent review. According to the Information Security Oversight Office, ISCAP officials have overruled agency classification decisions more than 65 percent of the time since 1996.

This regulation was quietly adopted without notice for public comment, imposes burdensome fees inconsistent with those charged for FOIA requests, and is absolutely contrary to President Obama's call for "an unprecedented level of openness in government." We respectfully request that the CIA withdraw this retrograde regulation. Representatives of our organizations are happy to meet with you to discuss this issue. Please contact the National Security Archive at foiadesk@gwu.edu.

Sincerely,

American Association of Law Libraries
American Booksellers Foundation for Free Expression
American Library Association
Bill of Rights Defense Committee
Brennan Center for Justice
Californians Aware

Center for Media and Democracy
Center for National Security Studies
Citizens for Responsibility and Ethics in Washington – CREW
Collaboration on Government Secrecy
The Constitution Project
Electronic Frontier Foundation - EFF
Electronic Privacy Information Center - EPIC
Federation of American Scientists
Freedom of Information Center at the Missouri School of Journalism
iSolon.org
James Madison Project
Liberty Coalition
MuckRock
National Coalition Against Censorship
National Coalition for History
National Freedom of Information Coalition
National Security Archive
National Security Counselors
OMB Watch
OpenTheGovernment.org
Project On Government Oversight - POGO
Progressive Librarians Guild
Public Citizen
Reporters Committee for Freedom of the Press
Society of American Archivists
Society of Professional Journalists
Special Libraries Association
Sunlight Foundation
Utah Foundation for Open Government
Washington Coalition for Open Government