

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

**THE NATIONAL SECURITY ARCHIVE FUND, INC.,**  
2130 H Street, NW, Suite 701  
The Gelman Library  
Washington, DC 20037,

Plaintiff,

v.

**UNITED STATES DEPARTMENT OF DEFENSE,**  
1000 Defense Pentagon  
Washington, DC 20301-1000,

Defendant.

Case No. 21-3358

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

1. Plaintiff National Security Archive Fund, Inc. (the Archive) has waited for years for Defendant United States Department of Defense (DOD) to decide fifty-one administrative appeals seeking the release of agency records under the Freedom of Information Act (FOIA), 5 U.S.C. § 552. Nearly half of these appeals (25 of 51) were filed from 2010–11 and have now been pending for more than ten years without a decision, and all but two (49 of 51) are at least five years old. Approximately half of the records being sought, moreover, are now more than fifty years old and thus subject to presumptive automatic declassification under Executive Order 13529. The Archive therefore brings this action to compel DOD to timely process these appeals and to declassify and release the records at issue.

**JURISDICTION AND VENUE**

2. This Court has jurisdiction under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.
3. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

## **PARTIES**

4. Plaintiff National Security Archive Fund, Inc., is a not-for-profit corporation located at George Washington University, established to promote research and public education on U.S. governmental and national security decision-making and to promote and encourage openness in government and government accountability.

5. Defendant United States Department of Defense is an Executive Branch Department of the United States Government and an agency within the meaning of 5 U.S.C. § 552(f). It has possession and control over the records sought by Plaintiff.

## **OVERVIEW OF THE ARCHIVE'S FOIA APPEALS**

6. The Archive is the world's largest nongovernmental library of declassified documents and has published more than one million pages of declassified records acquired through FOIA. Archive analysts file more than 1,000 FOIA requests annually and publish numerous document sets, briefing books, and other publications for dissemination to the public.

7. The appeals in this case stem from a series of declassification requests filed since the 1990s by Dr. William Burr, Senior Analyst at the Archive and director of the Archive's nuclear security documentation project. This project seeks to document major elements of the U.S. nuclear posture, including deployments of weapons systems, war plans and targeting, command and control of nuclear forces, and arms control, and to make such declassified information widely available to scholars and the interested public.

8. The original FOIA requests underlying the appeals at issue here were made to DOD or other agencies including the National Archives and Records Administration (NARA) and the Department of State. In each case, however, the resulting appeal was either made directly to DOD or transferred to DOD from another agency.

9. The fifty-one administrative appeals at issue, each of which is described in detail below, were made to DOD between February 24, 2010, and November 1, 2017.

10. In or around December 8, 2020, DOD began inquiring whether the Archive remained interested in its outstanding FOIA requests. DOD made such inquires with respect to Appeals Numbers 1–51 below.

11. In response, the Archive informed DOD via email on January 15, 2021, that it remained interested in Appeals 1–51 below.

12. In early May 2021, the Archive began resubmitting to DOD its outstanding FOIA requests that were greater than six years old in order to avoid any statute of limitations problem in a future legal action. Specifically, the Archive resubmitted the requests described in Appeals 1–16, 18, 20–23, 29–37, and 39–41 below.

13. On May 5, 2021, DOD’s FOIA Public Liaison, Ms. Tonya Fuentes, requested a meeting with Dr. Burr to discuss the new FOIA requests that were duplicates of prior cases that were still open on appeal and informed him that the issue of DOD’s failure to process the Archive’s outstanding appeals had been assigned to the Deputy Chief of DOD’s FOIA division, Pamela Andrews.

14. On May 6, 2021, Deputy Chief Andrews informed Dr. Burr that refiling requests was unnecessary and that any new requests would be put at the end of the queue. She further stated that the old requests and pending appeals would be processed as a priority. Finally, Deputy Chief Andrews represented in this conversation that the statute of limitations would not bar litigation on the administrative appeals referenced herein and took the position that the statute of limitations had not begun to run because the pending appeals had not been processed or completed as required by law.

15. In reliance on this discussion with Deputy Chief Andrews, Dr. Burr submitted a “Request Closing Letter” via email to Deputy Chief Andrews on May 7, 2021, stating that “Per our May 6, 2021, phone call regarding several National Security Archive duplicative requests, I am providing this notice that the following requests, which were filed between 1995 and 2008 and have been pending on appeal, can be closed.” He thereafter listed the requests described in Appeals 1–16, 18, 20–23, 29–37, and 39–41 below.

16. Aside from DOD’s communications with the Archive regarding continued interest in outstanding requests and resubmission of the same, the most recent substantive communication relating to each of these appeals—either DOD’s acknowledgement of receipt; its request for an extension of time to process the appeal; notice to the Archive of an appeal being transferred from another agency to DOD; or, as to certain appeals where the Archive received no response, the date on which it submitted the appeal—is identified below.

17. To date, as to each of the fifty-one appeals described below, DOD has neither denied the appeal nor released any additional records.

18. DOD’s extreme delay in processing FOIA appeals is not a problem unique to the Archive; rather, it is part of a pattern or practice of untimely processing of FOIA requests and appeals resulting in a large and growing backlog of unprocessed appeals.

19. From 2010 to 2020, DOD closed each fiscal year with an average of 752 backlogged appeals. The number of backlogged appeals grew from 657 in 2010 to 954 by the end of 2020.

20. In 2016, DOD recorded its highest number of backlogged appeals during the 10-year period, with approximately 1,016 backlogged appeals.

21. Most recently, in fiscal year 2020, DOD's number of backlogged appeals increased by 7% from 889 at the end of 2019 to 954 at the end of 2020.

**THE ARCHIVE'S 51 OUTSTANDING APPEALS TO DOD**

**(1) JCS History on the SIOP (Archive Request No. 2001144DOD106, Agency Case No. 02 F-0379)**

22. By letter dated December 18, 2001, the Archive sought disclosure of:

- "The SIOP: Controlling Nuclear Escalation: which is the top-secret annex to the History of the Joint Chiefs of Staff and National Policy, 1969-1972" (1991).
- Any chapter on nuclear policy or NATO issues in the "The Joint Chiefs of Staff and National Policy, Vol. XI, 1973-1976.

23. On December 31, 2009, DOD's Office of Freedom of Information (OFI) released three documents while withholding additional documents as classified.

24. The Archive appealed on February 24, 2010, seeking declassification and release of the withheld material.

25. On March 11, 2010, DOD requested an extension, citing a heavy FOIA workload.

**(2) Copy of Contractor Study on Trade with China (1998) (Archive Request No. 980087DOD021, Agency Case No. 98-F-0884)**

26. By letter dated February 23, 1998, the Archive sought disclosure of:

- "Chinese Contingencies and U.S. Opportunities," by Peter W. Colm et. al., Institute for Defense Analyses, May 1970, Study P-842, Contract Number DAHC-68-C-0152.
- A report by Browne and Shaw Research Corp., Waltham MA: "Trade Controls and the Communist Chinese Strategic Weapons Program," July 1968, contract no. DAHC15-67-C-0174.

27. On February 25, 2010, DOD informed the Archive that it had located two responsive documents but was withholding the second document as classified.

28. The Archive appealed on March 3, 2010, seeking declassification and release of the withheld material.

29. On March 22, 2010, DOD requested an extension, citing a heavy FOIA workload.

**(3) Documents from Accession 330-79-0034, ISA Records for 1976 (Archive Request No. 970117DOD019, Agency Case No. 97-F-1434)**

30. By letter dated August 4, 1997, the Archive sought disclosure of:

- Box 1:
  1. File 334 NPG
    - a. Memo, 12/14/76, The Balance of Nuclear Forces – SD 161
  2. File 350.05
    - a. Memo to Admiral Holcomb with Inclusion, 3/12/76, Beecher article on President's "Secret Pledge" to PRC Concerning Taiwan
  3. File 381
    - a. Memo to Chairman of JCS, 9/30/76, Nuclear Exchange Simulations
  4. File China 337
    - a. Memo to SecDef with copy of information paper, 3/24/76, Meeting with Gates – Chief Designate, U.S. Liaison Office, Peking

31. On February 18, 2010, DOD informed the Archive that a total of four documents (171 pages) were located as responsive to the Archive's initial request. However, the excised information in the released documents was determined to have been exempt from release because it was allegedly properly classified in accordance with Executive Order 12958, as amended. Specifically, DOD cited Section 1.4 (a) concerning military plans, weapons, or operations; Section 1.4 (b) concerning foreign government information; Section 1.4 (c) concerning Intelligence activities; and Section(s) 1.4 (d)-(h) as grounds for exemption.

32. On April 13, 2010, the Archive filed an administrative appeal under FOIA, seeking further review of the exempted material so that it could be determined whether the

document may be released. The Archive requested that the reviewers of the appeal take into consideration previously declassified information that may be relevant to excised portions of the released documents. The Archive identified several instances in which the excised information was connected to already declassified documents.

33. On March 26, 2010, DOD requested a time extension to complete the Archive's administrative appeal, citing an extremely heavy FOIA workload as justification.

**(4) State Department Records on National Security Study Memorandums (Archive Request No. 970079DOS021, Agency Case No. 08-A-0327-A1)**

34. By letter dated March 10, 1997, the Archive sought from the State Department disclosure of:

- Copies of any State Department or other agency reports prepared in response to the following National Security Study Memoranda:
  1. NSSM 63, U.S. Policy on Current Sino-Soviet Differences, 3 July 1969
  2. NSSM 69, U.S. Strategy for Asia, July 14, 1969
  3. NSSM 106, China Policy, November 17, 1970
  4. NSSM 124, Next Steps Toward the Peoples Republic of China, April 19, 1971

35. The State Department coordinated with DOD on this request and on April 9, 2010, DOD informed the Archive that it was releasing several excised documents concerning the U.S. military presence in Taiwan during the early 1970s.

36. On May 3, 2010, the Archive filed an administrative appeal under FOIA, seeking further review of the excised material so that it could be determined whether the document may be released. The Archive requested that the reviewers of the appeal take into consideration previously declassified information, and the passage of time since the document's creation, so that may release more information. The Archive identified several instances in which the excised information was connected to already declassified documents.

37. DOD received the Archive's appeal on May 12, 2010.

38. On May 18, 2010, DOD informed the Archive that it would be unable to complete the appeal within the statutory time requirement. DOD requested a time extension to complete the administrative appeal, citing an extremely heavy FOIA workload as justification.

**(5) Documents Concerning Taiwan, China, and Nuclear Relations with India (Archive Request No. 960752DOD094, Agency Case No. 96-A-1798-A1)**

39. By letter dated September 9, 1996, the Archive sought disclosure of:

- Copies of documents on the attached list from accession 70A5127, Record Group 330, ISA Records for 1965, TS Files.

40. By letter dated May 17, 2010, DOD informed the Archive that it had released several excised documents concerning Taiwan, China, and nuclear relations with India as responsive to Plaintiff's FOIA request. Two documents were withheld in their entirety.

41. On June 3, 2010, the Archive filed an administrative appeal under FOIA, requesting a fresh review of the withheld information so that DOD could determine whether more information may be released. The Archive explained that some of the withheld information was already available in the public domain.

42. On June 18, 2010, DOD requested a time extension to complete the administrative appeal, citing an extremely heavy FOIA workload as justification.

**(6) Secretary of Defense Records from 1967 (Archive Request No. 960870DOD113, Agency Case No. 97-A-0053-A1)**

43. By letter dated December 12, 1996, the Archive sought disclosure of:

- Copies of documents from Accession 72A2468, Official Records of the Secretary of Defense for 1967, as listed on the enclosure.

44. By letter dated August 13, 2010, DOD informed the Archive that it was withholding two documents in their entirety because they concern intelligence community activities relating to China.

45. On August 25, 2010, the Archive filed an administrative appeal under FOIA requesting further review of the withheld items so that DOD could determine whether they can be released at least in part. The Archive emphasized previous declassification and publication of relevant documents on intelligence operations against China.

46. On September 8, 2010, DOD received and acknowledged the appeal. DOD requested a time extension to complete the appeal, citing an extremely heavy FOIA workload as justification.

**(7) State Department Records on NATO (NARA) (Archive Request No. 950645NAR011, Agency Case No. 04-A-2400-A1)**

47. By letter dated April 26, 1995, the Archive sought from NARA disclosure of:

- Copies of documents withheld from Department of State Central Records, 1960-1963, record group 59, as listed below:

A. File 740.5, boxes 1646-1647, NND 949520:

1. Letter, Nitze to Rusk, 12/20/61
2. Kohler to Secretary, 1/24/62
3. Stoessel to Fessenden, 1/30/62
4. Memcon, 2/6/62
5. Report, 2/26/62
6. Polto 1180, 3/9/62
7. Memo, Kohler to Secretary, 4/16/62
8. Letter, Stoessel to Fessenden, 4/21/62
9. Summary, 4/28/62
10. Telegram 221830Z, 5/22/62

B. File 700.5611, NND 94950, all withheld items

- I also request declassification review and/or expedited processing (if already reviewed) of State Department decimal file 397.5611-GE, 1960-1963.

48. Through a letter dated August 24, 2010, NARA informed the Archive that DOD had released several excised documents, many of which were at least 50 years old at the time, as responsive to the Archive's FOIA request.

49. On September 27, 2010, the Archive filed an administrative appeal with DOD under FOIA, seeking further review of the excised material so that DOD could determine whether they can be released in their entirety. The Archive also requested that the reviewers of the appeal take into consideration previously declassified information that is directly relevant to the contents of the exempted materials.

50. On October 7, 2010, DOD acknowledged receipt of the appeal.

51. Through a letter dated October 13, 2010, DOD requested a time extension to complete the appeal, citing an extremely heavy FOIA workload as justification.

**(8) Draft Presidential Memorandums (1960s) (Archive Request No. 960001DOD001, Agency Case No. 96-A-0310-A1)**

52. By letter dated February 12, 1996, the Archive sought disclosure of:

- Copies of documents from Accession 330-91-002, ASD P&E Policy Files, as listed on the enclosure.

53. On May 13, 2003, the Archive amended the request to eliminate parts one, two, and five.

54. Through a letter dated October 12, 2010, DOD informed the Archive that it had excised several documents, many of which were at least 50 years old at the time. A total of 12 responsive documents (592 pages) were located but only eight documents (257 pages) were produced. The four remaining documents (355 pages) were sent to the Department of the Army, Department of the Navy, and the Department of the Air Force for review. Deleted information in the responsive documents were allegedly exempt from release because the information was classified in accordance with Executive Order 13526, specifically, Section(s) 1.4 (a), (d), (g), and (h). The information denied was also allegedly properly exempted under Section(s) 3.3 (b)(5), (b)(6), (b)(8), and (b)(9).

55. On October 27, 2010, the Archive filed an administrative appeal under FOIA, seeking further review of the excised material so that DOD could determine whether they can be released in their entirety. The Archive explained that despite the language of DOD's decision that declassification of the excised material would cause "serious harm" to U.S. foreign relations and to "ongoing diplomatic activities" and would reveal operational or tactical elements of prior [war] plans that are contained in ... active plans," the excised information had already been in the declassified public domain for years.

56. Through a letter dated November 10, 2010, DOD acknowledged the Archive's appeal and requested a time extension, citing an extremely heavy FOIA workload as justification.

**(9) Weapons Systems Evaluation Group (WSEG) Reports (Archive Request No. 960027DOD008, Agency Case No. 96-A-0423-A1)**

57. By letter dated February 26, 1996, the Archive sought disclosure of:

- Copies of documents from Defense Department accession 330-81-0439, USDRE records on WSEG reports, as listed on the enclosure.

58. On November 9, 2005, the Archive narrowed the scope of its request.

59. Through a letter dated October 23, 2010, DOD released excised variants of several Weapons Systems Evaluation Group (WSEG) reports and withheld one item in its entirety.

60. On November 16, 2010, the Archive filed an administrative appeal under FOIA, seeking further review of the excised material so that DOD could determine whether they can be released in their entirety. The Archive sought further review of the withheld information. The Archive also encouraged reviewers of this appeal to consider previously declassified information that is relevant to the withheld material.

**(10) Soviet ABM Systems, and Weapons Effects (Archive Request No. 950867DOD112, Agency Case No. 95-A-1510-A1)**

61. By letter dated July 6, 1995, the Archive sought disclosure of:

- Copies of contract studies held in accession 330-78-0097, Federal Records Center, Suitland, Maryland, as indicated in the attached list.

62. Through a letter dated December 31, 2010, DOD informed Plaintiff that a total of fifteen documents (1561 pages) were located. Five documents (434) were referred to another agency for review. Nine of the documents (983 pages) were denied in full. DOD released one document (144 pages). DOD also acknowledged in its responsive correspondence that its processing of the request was inadequate in light of the time elapsed since the request was submitted.

63. On January 25, 2011, the Archive filed an administrative appeal under FOIA, seeking further review of the withheld material so that DOD could determine whether they can be released in their entirety. The Archive sought further review of the withheld information, requesting that reviewers of this appeal take into consideration declassified information that that may be relevant to the contents of the exempted comments.

**(11) Top Secret Secretary of Defense Records (1974) (Archive Request No. 951171DOD153, Agency Case No. 95-A-2263-A1)**

64. By letter dated October 18, 1995, the Archive sought disclosure of:

- Any documents from the following files of accession 330-78-0010, Top Secret Secretary of Defense records for 1974, that relate in whole or in part to U.S. or Soviet nuclear strategy, arms control talks with the Soviet weapon, development of strategic nuclear weapons and weapons delivery systems (whether U.S. or Soviet).

65. On February 6, 1996, the Archive submitted a supplemental letter to the original FOIA requests. To expedite search and retrieval of relevant materials to the requests, the Archive specified in detail the type of documents it was seeking.

66. Through a letter dated December 30, 2010, DOD informed Plaintiff that several documents had been sent to other agencies for review. Three documents (7 pages) were denied in full. The remaining documents released by DOD were heavily excised. DOD determined that the excised information, as well as the documents denied in their entirety, were exempt from release because the information was allegedly properly classified in accordance with Executive Order 13526. Specifically, Section 1.4(a), (c), (d), (e), and (h). Furthermore, the information denied was also alleged to be exempt from automatic declassification in accordance with Section 3.3 (b)(2) and 3.3 (b)(4)-(6).

67. On January 31, 2011, the Archive filed an administrative appeal under FOIA, seeking further review of the withheld and excised material so that DOD could determine whether they more information could be released. The Archive explained that it should be possible to declassify some information from documents over thirty-five years old without harm to national security. Moreover, the availability of previously declassified information, some of which is directly relevant to the excised portions, confirms the possibility of further declassification.

68. Through a letter dated February 7, 2011, DOD acknowledged the appeal and requested a time extension, citing an extremely heavy FOIA workload as justification.

**(12) Defense Research and Engineering Records (Archive Request No. 950945DOD128, Agency Case No. 95-A-1662-A1)**

69. By letter dated July 28, 1995, the Archive sought disclosure of:

- Copies of documents on the attached list, from accessions 330-81-219 and 330-81-0501, Defense Research and Engineering Records held at the Federal Records Center, Suitland

70. On November 9, 2005, the Archive submitted a supplemental letter to the original FOIA requests, narrowing their scope to expedite search and retrieval of relevant materials.

71. Through a letter dated February 8, 2011, DOD informed the Archive that a total of 23 documents (541 pages) were located. Five documents (132 pages) had been denied in full. Approximately twenty-five documents (409 pages) were provided as responsive to the Archive's request. DOD determined that the withheld content was exempt from release because the information was allegedly properly classified in accordance with Executive Order 13526. Specifically, Section 1.4(a), (c), (g), and (h). Also, the information denied was also alleged to be exempt from automatic declassification in accordance with Section 3.3 (b)(1)-(2) and 3.3 (b)(4).

72. On March 3, 2011, the Archive filed an administrative appeal under FOIA, seeking further review of the exempted and excised documents so that DOD could determine whether additional information can be released. The Archive further requested that reviewers consider previously declassified material which is directly relevant to the information withheld in this case.

**(13) Air Force Directorate of Operations Records from 1968 (Archive Request No. 20040951A1R046, Agency Case No. 07-A-0402-A1)**

73. By letter dated August 20, 2004, the Archive refiled a FOIA request that was originally filed on August 12, 1994, to the Department of the Air Force. The request sought disclosure of:

- Copies of the documents cited below from Air Force Directorate of Operations accession 72A-5971, held at Federal Records Center, Suitland, Maryland:
  - A. Box 3, file RL (68) 10 Atomic Weapons (1 Jan. 68)
    - 1. Letter from XPDPA, 5/8/68/ nuclear weapons and Deterrence of War, with enclosures
  - B. Box 3, file RL (68) 13 Budget (1 Jan. 68 – 15 Aug. 68):
    - 1. Memo, 6/15/68, from SAFOS, signed Brown, Strategic Forces and Effectiveness Tables, with Detailed Recommendations
    - 2. Letter, 8/8/68 (might be 8/6), to XPFSA from XDOC, Review of Draft Presidential Memorandum on Strategic Offensive and Defensive Forces, with AFXDO Comments

- C. Box 3, file RL (68) 13 Budget (16 Aug. 1968 -):
  - 1. Memo, 8/26/68, to SOD from SAFOS, signed Brown, Draft Presidential Memo on Strategic Offensive and Defensive Forces, with attachments
- D. Box 4, file RL (68) 17 SAC (1 Jan. 68):
  - 1. Letter, 4/27/68 to SAC from C/S, USAF, with letter dated 4/8/68
  - 2. SAC Inspection Report, 3-18 September 1968
- E. Box 4, file RL (68) 22 Conferences (1 Jan. 68)
  - 1. Memo for Record, 4/11/68
  - 2. XDDFCC letter, 10/22/68, with Minutes of the 1968 Annual Worldwide Command War Planning Conference
- F. Box 4, file RL (68) 26 Special File (1 Jan. 68):
  - 1. Memo by Deputy Assistant Sec Def, Leadtime for U.S. Response to Soviet Actions, 1968
  - 2. Talking Points on SAFUS Memo to Halperin, 9/19/68
  - 3. Letter, 7/26/68, to OSD/ISA from Sec AF, with enclosure
  - 4. Memo, 7/28/68 to Halperin from Undersecretary AF Hoopes, with Attachment
  - 5. Memo to Hoopes from Kent, 7/22/68
  - 6. Memo to Halperin from Hoopes, 7/15/68
- G. Box 6, file RL (68) 38-9 Russia:
  - 1. Letter from XDOC, re: Report by J-5, 2/6/68
- H. Box 7, file RL (68) 57-2, Strategic Forces Planning
  - 1. Letter to SAC from AFCCS, 2/12/68, Strategic Concepts and Operations”

74. Through a letter dated March 25, 2011, NARA, which by that time had taken possession of the records at issue, informed the Archive that DOD had approved the release of several heavily excised documents from Air Force Directorate of Operations records for 1968.

75. On April 4, 2011, the Archive filed an administrative appeal to DOD under FOIA, seeking further review of the heavily excised documents so that DOD could determine whether additional information can be released. The Archive further requested that reviewers consider previously declassified material which is directly relevant to the information withheld in this case.

**(14) SALT II Negotiations (Archive Request No. 951055DOD145, Agency Case No. 95-A-2063-A1)**

76. By letter dated September 19, 1995, the Archive sought disclosure of:

- Copies of documents from accession 330-78-002, top secret SecDef records for 1973, as indicated on enclosed list.

77. On February 6, 1996, the Archive narrowed the scope of its request.

78. Through a letter dated March 11, 2011, DOD released heavily excised copies of several documents on SALT II negotiations during 1973 and exempted one other document in its entirety.

79. On April 11, 2011, the Archive filed an administrative appeal under FOIA, seeking further review of the exempted and excised documents so that DOD could determine whether additional information can be released. The Archive further requested that reviewers consider previously declassified material which is directly relevant to the information withheld in this case.

80. DOD acknowledged receipt of Plaintiff's appeal on April 18, 2011.

**(15) State Department Records from 1950s on Overseas Nuclear Deployments (Archive Request No. 950426NAR007, Agency Case No. 04-A-2183-A1)**

81. By letter dated April 14, 1995, the Archive sought from NARA disclosure of:

- Copies of the following documents from Department of State decimal files, 1960-1963:

A. 740.5611, boxes 1648-1650, NND 949520:

1. White to Merchant, 1/9/60
2. Dillon to Gates, 1/12/60
3. White to Merchant, 1/16/60
4. Memcon, 2/1/60
5. British Embassy to..., 740.5611/2-160
6. Kohler to Merchant, 3/1/60
7. Memo, Kohler to Secretary, 3/10/60
8. Distribution Sheet, State, 3/15/60
9. Letter, Wolf to Fessenden, 3/17/60

10. Memo, Kohler to Merchant, 3/17/60
11. Two memcons, 3/18/60
12. Memo, Kohler to Undersecretary, 3/26/60
13. Memcon, 4/9/60
14. Memo, Calhoun to Goodpaster, 4/12/60
15. Memo, Kohler to Merchant, 4/25/60
16. Report, Rowe, 4/27/60
17. Polto 2440, 6/10/60
18. Memo, Kohler to Undersec., 6/11/60
19. Memo, Kohler to Acting Sec., 6/13/60
20. Memo, Kohler to Secretary, 6/18/60
21. Letter, Smith to Kohler, 6/22/60
22. Memcon, 7/22/60
23. Memcon, 9/13/60
24. Memo, Herter to Pres., 9/14/60
25. Letter, Dillon to Irwin, 10/3/60
26. Memcon, 10/4/60
27. Paris tels. 1510/1511, 10/15/60
28. Report, 11/4/60
29. Memcon, 11/10/60
30. Memo, Farley, 3/14/61
31. State tels., 5245/5246, 5/9/61
32. Statement, 3/29/61
33. Rusk to McNamara, 2/9/62

B. Box 1650, file 740.5612

1. Memcon, 11/4/60
2. Memcon, 2/21/6

C. All withheld material in file 741.5611, box 1661, NND949520.

82. Through a letter dated March 30, 2011, NARA informed the Archive that DOD declassified two documents (9 pages) and released nine documents (39 pages) with portions denied under section (b)(1) and (b)(3) of the Freedom of Information Act (5 U.S.C. 552).

83. On April 18, 2011, the Archive filed an administrative appeal with DOD requesting further review of the withheld material so that it could be determined whether the alleged (b)(3) exemption was truly applicable. Additionally, the Archive requested that reviewers of the appeal take into consideration previously declassified and public record information that is directly relevant to the excised portions.

84. On April 29, 2011, DOD acknowledged the Archive's appeal.

**(16) Secretary of Defense Records from 1971 (Archive Request No. 950961DOD136, Agency Case No. 95-A-1874-A1)**

85. By letter dated August 23, 1995, the Archive sought disclosure of:

- Copies of documents listed on attachment, from accession 330-76-207, records of the Secretary of Defense for 1971, held at Federal Records Center, Suitland

86. On March 23, 2008, the Archive submitted a supplemental letter narrowing the scope of its initial request to expedite search and retrieval of relevant materials .

87. Through a letter dated March 28, 2011, DOD informed the Archive that it had located a total of seventy-seven responsive documents (1653 pages), fourteen for it was denying release in full. According to DOD, four documents were duplicative in relation to a prior request. DOD released forty-seven documents as responsive to the Archive's request.

88. On April 26, 2011, the Archive filed an administrative appeal under FOIA, seeking further review of the exempted and excised documents so that DOD could determine whether additional information can be released. The Archive further requested that reviewers consider previously declassified material which is directly relevant to the information withheld in this case.

89. On May 5, 2011, DOD acknowledged the Archive's appeal and requested a time extension citing an overload of FOIA request as the reason.

**(17) Deployment of MX Missiles (Archive Request No. 980419DOD067, Agency Case No. 11-A-0082-A1)**

90. By letter dated September 29, 1998, the Archive sought disclosure of:

- Any documents relating in whole or in part to the deployment of MX missiles, design decisions for Trident II (D5) missiles, or NATO decisions to deploy intermediate/medium range ballistic missiles, that may be found in the 471.94 file series in the following Department of Defense accessions

91. Through a letter dated September 20, 2010, DOD informed the Archive that it had located a total of forty-one documents (450 pages). Several documents were sent to various departments and agencies for review. Release of eight documents (136 pages) was denied in full. DOD released only twenty-five documents (76 pages) as responsive to the Archive's request.

92. On May 17, 2011, the Archive filed an administrative appeal under FOIA, seeking further review of the exempted and excised documents so that DOD could determine whether additional information can be released. The Archive further requested that reviewers consider previously declassified material which is directly relevant to the information withheld in this case.

93. On May 17, 2011, DOD acknowledged the appeal.

**(18) Records of Program Analysis and Evaluation (PA&E) office (Archive Request No. 96003DOD003, Agency Case No. 96-A-0256-A1)**

94. By letter dated February 5, 1996, the Archive sought disclosure of:

- Copies of documents from Accession 330-91-105, OASD PA&E Policy Files, as listed on the enclosure.

95. On March 19, 2009, the Archive submitted a supplemental letter narrowing the scope of its initial request to expedite search and retrieval of relevant materials .

96. Through a letter dated April 8, 2011, DOD informed the Archive that it had located a total of eleven documents (1226 pages). Of the eleven documents, seven (960 pages) were deemed non-responsive after the amendment was submitted. One document (63 pages) was denied in full. Two documents (145 pages) were referred to the Department of the Navy for review. One document (58 pages) was released.

97. On June 1, 2011, the Archive filed an administrative appeal under FOIA, seeking further review of the exempted and excised documents so that DOD could determine whether additional information can be released. The Archive further requested that reviewers consider

previously declassified material which is directly relevant to the information withheld in this case.

98. On June 21, 2011, DOD acknowledged the appeal and requested a time extension due to a work overload.

**(19) ISA Policy Documents from 1970s (Archive Request No. 960118DOD017, Agency No. 11-A-0096-A1)**

99. By letter dated April 8, 1996, the Archive sought disclosure of:

- Copies of documents from accession 330-81-763, ASD/ISA Policy File, 1976-1981, as listed on enclosure.

100. On March 19, 2009, the Archive submitted a supplemental letter narrowing the scope of its initial request to expedite search and retrieval of relevant materials .

101. Through a letter dated April 8, 2011, DOD informed the Archive that it had located a total of eleven documents (1226 pages). Of the eleven documents, seven (960 pages) were deemed non-responsive to the request as amended. One document (63 pages) was denied in full. Two documents (145 pages) were referred to the Department of the Navy for review. One document (58 pages) was released.

102. On June 1, 2011, the Archive filed an administrative appeal under FOIA, seeking further review of the exempted and excised items so that DOD could determine whether additional information can be released. The Archive further requested that reviewers consider previously declassified material which is directly relevant to the information withheld in this case.

103. On June 21, 2011, DOD acknowledged the appeal and requested a time extension due to a work overload.

**(20) Records of the Secretary of Defense (1970) (Archive Request No. 950960DOD135, Agency Case No. 95-A-1819-A1)**

104. By letter dated August 18, 1995, the Archive sought disclosure of:

- Copies of documents listed on attachment, from accession 330-76-076, records of the Secretary of Defense for 1970, held at Federal Records Center, Suitland

105. By later dated October 17, 1996, DOD informed the Archive that two documents (4 pages) were transferred to other agencies for review.

106. Through a letter dated April 8, 2011, DOD informed the Archive that it had located a total of twenty-nine responsive documents (274 pages). Two documents (4 pages) were transferred to other agencies for review. One document was determined to be duplicative. The remaining twenty-six document (219 pages) were released to the Archive.

107. On June 1, 2011, the Archive filed an administrative appeal under FOIA, seeking further review of the significantly excised items so that DOD could determine whether additional information can be released. The Archive further requested that reviewers consider previously declassified material which is directly relevant to the information withheld in this case.

108. On June 16, 2011, DOD acknowledged the appeal and requested a time extension due to a work overload.

**(21) Records of the Secretary of Defense (1975) (Archive Request No. 951172DOD154, Agency Case No. 95-A-2303-A1)**

109. By letter dated October 25, 1995, the Archive sought disclosure of:

- Copies of documents from accession 330-78-0059, TS SecDef records for 1975, held at the Federal Records Center, Suitland, as listed on the attachment.

110. Through a letter dated May 23, 2011, DOD informed the Archive that it was unable to locate all records requested. DOD was able to recover forty-six documents responsive to the request (499 pages). Twenty-two documents (350 pages) were denied in full. Five

documents (48 pages) were referred to another agency for review. Of the 46 documents located, only 17 documents (92 pages) were released to the Archive.

111. On June 10, 2011, the Archive filed an administrative appeal under FOIA, seeking further review of the significantly excised items so that DOD could determine whether additional information can be released. The Archive further requested that reviewers consider previously declassified material which is directly relevant to the information withheld in this case.

112. On June 16, 2011, DOD acknowledged the appeal and requested a time extension due to a work overload.

**(22) Decimal Files Regarding the UK (Archive Request No. 940770NAR047, Agency Case No. 99-A-2203-A1)**

113. By letter dated September 3, 1994, the Archive sought from NARA disclosure of:

- Copies of the following documents from Department of State decimal files, 1960-1963:

- A. 740.5611, boxes 1648-1650, NND 949520:
  1. White to Merchant, 1/9/60
  2. Dillon to Gates, 1/12/60
  3. White to Merchant, 1/16/60
  4. Memcon, 2/1/60
  5. British Embassy to..., 740.5611/2-160
  6. Kohler to Merchant, 3/1/60
  7. Memo, Kohler to Secretary, 3/10/60
  8. Distribution Sheet, State, 3/15/60
  9. Letter, Wolf to Fessenden, 3/17/60
  10. Memo, Kohler to Merchant, 3/17/60
  11. Two memcons, 3/18/60
  12. Memo, Kohler to Undersecretary, 3/26/60
  13. Memcon, 4/9/60
  14. Memo, Calhoun to Goodpaster, 4/12/60
  15. Memo, Kohler to Merchant, 4/25/60
  16. Report, Rowe, 4/27/60
  17. Polto 2440, 6/10/60
  18. Memo, Kohler to Undersec., 6/11/60
  19. Memo, Kohler to Acting Sec., 6/13/60
  20. Memo, Kohler to Secretary, 6/18/60

21. Letter, Smith to Kohler, 6/22/60
22. Memcon, 7/22/60
23. Memcon, 9/13/60
24. Memo, Herter to Pres., 9/14/60
25. Letter, Dillon to Irwin, 10/3/60
26. Memcon, 10/4/60
27. Paris tels. 1510/1511, 10/15/60
28. Report, 11/4/60
29. Memcon, 11/10/60
30. Memo, Farley, 3/14/61
31. State tels., 5245/5246, 5/9/61
32. Statement, 3/29/61
33. Rusk to McNamara, 2/9/62

B. Box 1650, file 740.5612

1. Memcon, 11/4/60
2. Memcon, 2/21/61

C. All withheld material in file 741.5611, box 1661, NND949520.

114. As a result of the Archive's request, several documents were assigned to DOD for review. DOD denied four documents in their entirety, and heavily excised several others.

115. On July 5, 2011, the Archive filed an administrative appeal with DOD under FOIA, seeking further review of the significantly excised items so that DOD could determine whether additional information can be released. The Archive further requested that reviewers consider previously declassified material which is directly relevant to the information withheld in this case.

**(23) Records of the Secretary of Defense (1975) (Archive Request No. 980426DOD069, Agency Case No. 98-A-1890-A1)**

116. By letter dated October 25, 1995, the Archive sought disclosure of:

- Copies of documents from accession 330-78-0059, TS SecDef records for 1975, held at the Federal Records Center, Suitland, as listed on the attachment.

117. Through a letter dated May 27, 2011, DOD informed the Archive that fourteen responsive documents (630 pages) were located. Three documents (185 pages) were denied in

full. Approximately eleven redacted documents (445 pages) were provided as responsive to the Archive's request. DOD identified 5 U.S.C. 552(b)(1), (b)(5), (b)(6), and other exemptions as the basis for the redactions and denials.

118. On July 14, 2011, the Archive filed an administrative appeal under FOIA, seeking further review of the significantly excised items and exempted documents so that DOD could determine whether additional information can be released. The Archive further requested that reviewers consider previously declassified material which is directly relevant to the information withheld in this case.

119. On July 18, 2011, DOD acknowledged the Archive's appeal and requested a time extension due to a work overload.

**(24) Records of Former Arms Control and Disarmament Agency (Archive Request No. 20040110DOS045, Case No. 05-A-0467-A1)**

120. By letter dated February 4, 2004, the Archive sought from the State Department disclosure of:

- documents from accession 383-99-0162, records of the former Arms Control and Disarmament Agency, held at the Washington National Records Center, Suitland, MD

121. The State Department referred two documents and the Archive's request to DOD.

122. Through a letter dated August 24, 2011, DOD released two excised documents as responsive to the Archive's FOIA request to the Department of State

123. On June 10, 2011, the Archive filed an administrative appeal under FOIA to DOD, seeking further review of the significantly excised portions of the two released documents so that it may be determined whether additional information can be declassified.

**(25) Arms Control and National Security (Archive Request No. 980376DOD059, Agency Case No. 98-A-1662-A1)**

124. By letter dated June 22, 1998, the Archive sought disclosure of:

- Copies of documents from Department of Defense accession 330-96-0038 held at the Washington National Records Center as described in the attached list.

125. Through a letter dated September 1, 2011, DOD released heavily excised versions of forty documents concerning arms control and national security issues during the late 1970s and early 1980s. An additional eight documents were withheld in their entirety.

126. On October 19, 2011, the Archive filed an administrative appeal under FOIA, seeking further review of the significantly excised items so that DOD could determine whether additional information can be released. The Archive further requested that reviewers consider previously declassified material which is directly relevant to the information withheld in this case.

127. On October 21, 2011, DOD acknowledged the Archive's appeal and requested a time extension due to a work overload.

**(26) The JCS and National Policy (Archive Request No. 20011424DOD103, Case No. 02-A-0476-A1)**

128. By letter dated November 30, 2001, the Archive sought disclosure of:

- Excerpts from the following histories of the JCS and National Policy:
  1. any chapters from the history for 1965-1968 concerning U.S. policy toward NATO
  2. any chapters or material from the history for 1969-1972 concerning a) U.S. policy toward NATO and b) the "JCS Readiness Test" of October 1969

129. Through a letter dated February 29, 2012, DOD informed the Archive that a total of three documents (117 pages) were located. DOD determined that the excised information in the responsive documents, as well as 56 other full documents (240 pages) was exempt from

release under Executive Order 13526, specifically, Section 1.4(a), (d), and Section 3.3(b)(5), (6), and (9).

130. On March 15, 2012, the Archive filed an administrative appeal under FOIA, seeking further review of the significantly excised items so that DOD could determine whether additional information can be released without harm to national security or violating statutory requirements.

**(27) Joint Strategic Target Planning Staff (1973-1976) (Archive Request No. 20030284DOD020, Case No. 03-A-1236-A1)**

131. By letter dated April 24, 2003, the Archive sought disclosure of:

- Histories of the Joint Strategic Target Planning Staff for the period between July 1973 and June 1976
- Any JSTPTS histories specifically on the preparation of SIOP-5.

132. Through a letter dated September 1, 2011, DOD released heavily excised versions of three documents (323 pages) as responsive to the Archive's request. DOD determined that the deleted information was exempt from because the information was properly classified in accordance with Executive Order 13526, Section 1.4(a), (c), and (d).

133. On July 2, 2012, the Archive filed an administrative appeal under FOIA, seeking further review of the significantly excised items so that DOD could determine whether additional information can be released. The Archive further requested that reviewers consider previously declassified information concerning the Single Integrated Operational Plan and strategic nuclear targeting policy during the 1970s which is directly relevant to this appeal.

134. On July 17, 2012, DOD acknowledged the appeal and requested a time extension due to a work overload.

**(28) Secretary of Defense Statement on Strategic Forces (Archive Request No. 20030228DOD013, Case No. 03-A-1010-A1)**

135. By letter dated March 24, 2003, the Archive sought disclosure of:

- Accession 330-80-0061 OSD statements, box 1: SecDef Policy Statements on Strategic forces, 1974-75; *ibid*, 1973-74

136. Through a letter dated July 26, 2012, DOD released several excised documents.

137. On September 27, 2012, the Archive filed an administrative appeal under FOIA, seeking further review of the significantly excised materials so that DOD could determine whether additional information can be released. The Archive explained that some of the excised documents were never classified initially and consisted of public statements made by Secretary of Defense James Schlesinger to Congress. Additionally, many of the “classified” documents had already been released to the public.

138. On September 28, 2012, DOD acknowledged the appeal and requested a time extension due to a work overload.

**(29) Soviet Violations of SALT II (Archive Request No. 20040813DOD109, Agency Case No. 04-A-2204-A1)**

139. By letter dated July 15, 2004, the Archive sought disclosure of:

- Any memoranda, reports or briefing papers relating to NSC meetings held in late April and May of 1986 discussing about a possible Soviet violation of SALT II and a possible reinterpretation of the ABM treaty to enable deployment and experiment of the SDI program.

140. Through a letter dated September 18, 2012, DOD informed the Archive that eight responsive documents (350 pages) were located. Release of three documents (11 pages) was denied in full. One document (14 pages) was referred to another agency for review. Only four documents (325 pages) were released, but were excessively excised.

141. On November 8, 2012, the Archive filed an administrative appeal under FOIA, seeking further review of the significantly excised items so that DOD could determine whether additional information can be released. The Archive further requested that reviewers consider previously declassified information and questioned whether the documents remain sensitive considering more than 25 years had passed following the events at issue in the requested documents.

142. On November 14, 2012, DOD acknowledged the appeal and requested a time extension due to a work overload.

**(30) State Department Records on US-UK relations (Archive Request No. 940871NAR055, Agency Case No. 98-A-1725-A2)**

143. By letter dated October 11, 1994, the Archive sought from NARA disclosure of:

- All material withheld from the following files in Record Group 59, Department of State Policy Planning Staff 1947-1953, box 17 (NND 883076):
  1. Great Britain 1947-1953
  2. Great Britain 1948-1950 (2 files)
  3. Great Britain 1951
  4. Great Britain 1952-1953 (2 files)
- All material withheld from decimal file 711.56341, (NND 907415), Boxes 2888-2890, 1955-1959 decimal files.
- The following documents from decimal file 611.41, 1950-1955 decimal files, NND 852911, Box 2770:
  1. Partial folder 1952 (all PFs in this request are from January 1952 file)
  2. Partial folder 1952
  3. Memcon, 1/18/52
  4. Partial folder 1952
  5. Minutes, 3/6/53
  6. Memo, 3/10/53, Smith to SecState

144. Through a letter dated October 1, 2012, NARA informed the Archive that DOD had released a number of excised documents on Anglo-American nuclear relations found in the State Department records as responsive to the Archive's request.

145. On October 31, 2012, the Archive filed an administrative appeal under FOIA, seeking further review of the significantly excised items so that DOD could determine whether additional information can be released. The Archive further explained that the documents at issue in the appeal were over a half-century old and questioned whether their declassification could cause any harm to national security as claimed by DOD.

146. On November 19, 2012, DOD acknowledged the appeal and requested a time extension due to a work overload.

**(31) Theater Nuclear Forces Deployment Issues (Archive Request No. 20031020DOS113, Agency Case No. 05-A-0738-A1)**

147. By letter dated November 24, 2003, the Archive sought from the State Department disclosure of:

- ACDA accession 383-98-0162, docs from:
  - A. Box 21:
    1. CIA Memo on Soviet Cruise Missile Program, 1/75
    2. CIA Report on Status of Soviet Strategic Forces, 4/75
  - B. Box 22:
    1. ACDA Memo on Mass Destruction Terrorism Study, 9/75
    2. ACDA Memo on Additional Background on Total Yield Deliverable by USSR, 10/75
    3. ACDA Memo on New Initiative Dealing with Nuclear Terrorism (1st Draft), 2/76
    4. CIA Report on Status of Soviet Strategic Offensive Forces as of 3/1/76, 3/76
  - C. Box 23:
    1. Paper on the Soviet Cruise Missile Program, 3/76
    2. ACDA Memo for Director on Visit to SAC Headquarters, 6/76
  - D. Box 24:
    1. ACDA Study on Minuteman Survivability Through 1986, 1/76
    2. DIA Report on Members View of Un-reinforced Attack, 10/76
    3. Department of State Memo on US SALT Position, 3/77
    4. White House Memo on SALT and Other Arms Control Issues Addressed in Moscow, 4/77

5. OSD Memo for the SCC SALT Working Group on the Strategic Balance Under the US SALT. Comprehensive Proposal of 3/25/77
6. CIA Memo on Soviet Views of the Strategic Implications of the US Moscow Proposals/ 5/77
7. Final Draft Paper on Cruise Missiles--US/NATO Consultation, 5/77

E. Box 25:

1. CIA report on Status of Soviet Strategic Forces as of 6/1/77, 6/77
2. White House Memo for the Pres. on Summary Report for Your Info., 6/77
3. White House Memo on SCC Meeting, 11/6/77, 10/77
4. NSC Memo on Enhanced Radiation Warhead, 11/77
5. DIA Intelligence Appraisal: USSR: An Update on Soviet Perspectives on Nuclear War, 1/78

F. Box 26:

1. White House Memo on SCC Meeting on SALT, 3/78
2. Report on Minuteman Survivability, 4/78
3. U.S. and Soviet Positions on Major SALT Issues, 5/78
4. Defense Dept. Memo for the President, "Diminishing US Lead in Total Numbers of Strategic Warheads," 7/78
5. NSC Memo on SCC Meeting - PR-38, 8/22/78, 8/78
6. DOS Memo to Secretary--SALT SCC Meeting, 9/1/78, 8/78
7. Review of US Launch-Under Attack Option--a CIA report Prepared for ACDA, 10/78

G. Box 27:

1. CIA Report on Status of Soviet Strategic Offensive Forces As of 5/1/79, 5/79
2. NSC Memo Memo re: SCC Meeting - TFN - 7/5/79, 7/79
3. Defense Dept. Memo for the President on MX Basing, 9//79
4. White House Memo on Summary of Conclusions: SCC Meeting on PRM 38 LRTNF, 9/78
5. Dept of State Memo on Discussion for the Failed Bilaterals (Final Edit on TFN Issues), 9/78
6. ACDA Memo for the Director on SCC Meeting, LRTNF, 7/5/79, 7/79
7. ACDA Memo for the Director on SCC Meeting on TNF, 3/23/79, 3/79
8. Report of the High-Level Group on Broad Goals, n.d.
9. Department of State Memo on US/UK Strategic Cooperation, 10/79
10. ACDA Memo on US/UK Strategic Cooperation, 10/79
11. Draft Report on LRTNF Systems: Military Considerations, 6/28/78, 6/78
12. NSC Memo Attaching SCC Approved Instructions for D. Aaron's Trip, 7/79
13. NSC Memo re SCC Meeting on TNF, 8/16/79, 8/79

148. The State Department referred the Archive's request and five documents (72 pages) to DOD, which received them on December 8, 2004.

149. Through a letter dated October 1, 2012, DOD released twelve documents (72 pages) as responsive to the Archive's request.

150. On December 10, 2012, the Archive filed an administrative appeal under FOIA, seeking further review of twelve heavily excised documents on the theater nuclear forces debates of 1978-1979. The Archive further requested that DOD consider previously declassified information.

151. On December 10, 2012, DOD acknowledged the Archive's appeal and requested a time extension due to a work overload.

**(32) Documents on Strategic Air Command and NATO Nuclear Planning Group (Archive Request No. 940753NAR044, Agency Case No. 01-A-2296-A1)**

152. By letter dated August 25, 1994, the Archive sought from NARA disclosure of:

- Contents of the following folders held in the Earl Wheeler Papers, Record Group 218, Joint Chiefs of Staff:

Box 80:

1. file 323.3 CINCSAC:

Box 98:

1. 337 NPG Meeting (Sept 67
2. 337 NPG Meeting, April 68
3. 337 NPG Meeting, Bonn, Oct. 68

Boxes 115:

1. 471.94, Missiles/Rockets, 3 folders

153. On September 13, 1994, NARA acknowledged the Archive's request and requested a time extension.

154. Through a letter dated June 4, 2013, NARA informed the Archive that DOD and the Department of Energy had released several excised documents as responsive to the Archive's FOIA request.

155. On July 12, 2013, the Archive filed with NARA an administrative appeal under FOIA, seeking further review of the significantly excised items so that DOD could determine whether additional information can be released. The Archive limited the appeal to document ID number 601131; the Joint Staff memorandum enclosing a memorandum by Commander in Chief Strategic Air Command General Thomas Power dated November 3, 1964, with attachments.

156. On August 16, 2013, DOD received the Archive's appeal.

**(33) Records on Net Evaluation Subcommittee (Archive Request No. 20010008NLE001, Agency Case No. 01-A-2264-A1)**

157. By letter dated January 23, 2001, the Archive sought from the Dwight D. Eisenhower Library disclosure of:

- Copies of reports presented annually to the National Security Council by the Net Evaluation Subcommittee of the National Security Council for each year from 1957 to 1960. These documents should be in a collection of recently accession of intelligence files recently accessioned by the National Security Council to the presidential libraries.

158. Through a letter dated December 9, 2013, the Dwight D. Eisenhower Library informed the Archive that DOD had denied in its entirety the reports of the NSC Net Evaluation Subcommittee (NESC) from 1957 to 1960 sought in the Archive's initial FOIA request.

159. On December 17, 2013, the Archive filed an administrative appeal under FOIA, seeking further review of the of the documents denied by DOD. The Archive explained that considering previous declassification decisions by the U.S. government agencies it should be possible for DOD to declassify significant and substantive portions of these reports.

160. On December 31, 2013, DOD acknowledged the Archive's appeal and requested a time extension due to a work overload.

**(34) Top Secret Central Foreign Policy Files, 1964-1966 (Archive Request No. 970302NAR058, Agency Case No. 06-A-1726-A1)**

161. By letter dated May 8, 1997, the Archive sought from NARA disclosure of:

- Copies of the following documents withdrawn from Record Group 59, Formerly Top Secret Central Foreign Policy Files, 1964-1966, NND 959000:

A. Box 1: tabs 1/26-34, 35, 53, 59, 60 and 62

B. Box 3: tabs 3-44 and 54; 2-20 through 2-29; 1-12, 1-13, 1-15 through 1-25

C. Box 4: tabs 2-64, 76, 78 through 80, 3-6 and 3-7

D. Box 5: tabs 2-4, 3-10, 10A, 11, 12, 14, 15, 16, and 18

E. Box 6: tabs 1-84, 86 through 97, 2-6 through 16, 18; 1-102 through 108, 111

F. Box 9: tab 9B (1)

G. Box 10: tabs 4-9, 3-180 through 184, 4-8

H. Box 11: tabs 4-27, 28, 29, 32, and 53

I. Box 14: tab 6-1

162. Through a letter dated December 13, 2013, NARA informed the Archive that DOD had declassified in whole or in part several documents as responsive to its request.

163. On January 8, 2014, the Archive filed an administrative appeal under FOIA limited to a single released document, tab 2-4 in box 5, which is a State Department memorandum dated November 16, 1964, concerning a meeting between Secretary of Defense Robert McNamara and West German Defense Minister von Hassel. The memorandum was excessively excised such that it is virtually impossible to determine its exact subject matter.

164. On June 17, 2014, DOD acknowledged the Archive's appeal and requested a time extension due to a work overload.

**(35) JCS Chairman Radford Files (NARA) (Archive Request No. 940025NAR009, Agency Case No. 99-A-0403-A1)**

165. By letter dated January 12, 1994, the Archive sought from NARA disclosure of:

- Copies of the documents withdrawn from the following files in RG 218, Records of the Chairman, Joint Chiefs of Staff, A, Arthur Radford Papers, Box 50:
  1. 381 (Net Evaluation)
  2. ditto (July-December 1955)
  3. ditto (1957)
  4. ditto (1956)
  5. ditto (Jan-May 1955)
  6. ditto (June 1955)
- Decimal files, 1958: CCS 471.6 (8-15-45), Sections 108-115 and 125 1)

166. Through a letter dated February 12, 2014, NARA informed the Archive that DOD had released excised and complete version of numerous documents from record group 218, records of JCS Chairman Arthur Radford. In addition, one document was withheld in its entirety.

167. On March 14, 2014, the Archive filed an administrative appeal with NARA under FOIA regarding the various documents that were heavily excised or denied in their entirety on 552 U.S.C. 552(b)(1) grounds despite being over fifty-five years old. The Archive questioned whether the information remains so sensitive that its release would in any way damage national defense or foreign relations and limited its appeal to 552(b)(1) and (b)(3) information in two of the excised documents and the single document denied in its entirety.

168. On April 17, 2014, the Archive submitted supplemental information to the March 14, 2014, administrative appeal.

169. On May 1, 2014, DOD received the appeal.

**(36) Documents on US/UK Nuclear Relations (Archive Request No. 940871NAR055, Agency Case No. 02-A-1474-A1)**

170. By letter dated October 11, 1994, the Archive sought from NARA disclosure of:

- Copies of the following:

A. All material withheld from the following files in Record Group 59, Department of State Policy Planning Staff 1947-1953, box 17 (NND 883076):

1. Great Britain 1947-1953
2. Great Britain 1948-1950 (2 files)
3. Great Britain 1951
4. Great Britain 1952-1953 (2 files)

B. All material withheld from decimal file 711.56341, (NND 907415), Boxes 2888-2890, 1955-1959 decimal files.

C. The following documents from decimal file 611.41, 1950-1955 decimal files, NND 852911, Box 2770:

1. Partial folder 1952 (all PFs in this request are from January 1952 file)
2. Partial folder 1952
3. Memcon, 1/18/52
4. Partial folder 1952
5. Minutes, 3/6/53
6. Memo, 3/10/53, Smith to SecState

171. Through a letter dated April 2, 2014, NARA informed the Archive that DOD had released several documents from Record Group 59 in excised form.

172. On April 24, 2014, the Archive filed an administrative appeal with NARA under FOIA requesting further review of the excised portions so that it could be determined whether more information can be declassified. The Archive further explained that the availability of previously declassified information that is directly relevant to the excised portions should make it possible for DOD to agree to release the excised details.

**(37) State Department Central Files—Early 1960s (NARA) (Archive Request No. 950645NAR011, Agency Case No. 04-A-2219-A1)**

173. By letter dated April 26, 1995, the Archive sought from NARA disclosure of:

- Copies of documents withheld from Department of State central records, 1960-1963, record group 59, as listed below:
  - A. file 740.5, boxes 1646-1647, NND 949520:
    1. Letter, Nitze to Rusk, 12/20/61
    2. Kohler to Secretary, 1/24/62
    3. Stoessel to Fessenden, 1/30/62
    4. Memcon, 2/6/62
    5. Report, 2/26/62
    6. Polto 1180, 3/9/62
    7. Memo, Kohler to Secretary, 4/16/62

8. Letter, Stoessel to Fessenden, 4/21/62
9. Summary, 4/28/62
10. Telegram 221830Z, 5/22/62

- file 700.5611, NND 94950, all withheld items
- “I also request declassification review and/or expedited processing (if already reviewed) of State Department decimal file 397.5611-GE, 1960-1963.”

174. Through a letter dated May 9, 2014, NARA informed the Archive that DOD had excised several documents from Record Group 59.

175. On May 21, 2014, the Archive filed an administrative appeal with NARA under FOIA, seeking further review of the significantly excised items so that DOD could determine whether additional information can be released. The Archive explained that the availability of previously declassified formerly highly sensitive information from this period on related topics suggested that the standards used by DOD for this review were overly restrictive and based on a misunderstanding of the requirements of national security policy.

**(38) ACDA Documents on Strategic Issues (Archive Request No. 980376DOD059, Agency Case No. 98-A-1662-A2)**

176. By letter dated June 22, 1998, the Archive sought disclosure of:

- Copies of documents from Department of Defense accession 330-96-0038 held at the Washington National Records Center as described in the attached list.

177. In response, DOD informed the Archive that the request was effectively overloading the system. Via email on April 3, 2009, the Archive narrowed its request to boxes 5, 6, and 7 of the previously requested documents.

178. Through a letter dated April 25, 2014, the State Department’s Office of Information Programs and Services, which was coordinating with DOD on the review and subsequent declassification of the requested documents, responded to the Archive’s request for

documents retrieved from the request to DOD. Many of the requested documents were heavily excised.

179. On May 12, 2014, the Archive filed an administrative appeal under FOIA with the Department of State seeking further review of the significantly excised items so that it could determine whether additional information can be released. The Archive questioned why so much vital information needed to be withheld from any of the requested documents, decades after they were created in what was a “very different” security environment.

180. On July 23, 2014, the State Department notified DOD that “before we (OIPS) take final action, we ask you re-review the material you forwarded to us for this appeal by Dr. Burr.”

181. DOD received the appeal on July 29, 2014.

**(39) Report on Warsaw Pact Threat to Central Europe (Archive Request No. 20020265DOD018, Agency Case No. 02-A-1250-A1)**

182. By email dated May 1, 2002, the Archive sought disclosure of:

- The following document from box 4 of Defense Department accession 330-86-70, Policy Files for Assistant to the Secretary for Atomic Energy, 1961-1980, held at the Federal Records Center, Suitland:

TS-77-84, Report on the Size and Timing of the Warsaw Pact Threat to Central Europe

183. Through a letter dated August 20, 2014, DOD informed the Archive of the results of the search and release determination for the requested documents. Included in the responsive documents were heavily excised versions of a lengthy report on the “The Size and Timing of the Warsaw Pact Threat to Central Europe.”

184. On September 15, 2014, the Archive requested further declassification review of the withheld information. The Archive point to four examples of lightly excised materials

declassified by the CIA that suggested DOD should likewise be able to release additional information.

185. On September 16, 2014, DOD acknowledged the Archive's appeal and requested a time extension due to a work overload.

**(40) Document on Ballistic Missile Defense (1983) (Archive Request No. 20040716DOD079, Agency Case No. 04-A-1730-A1)**

186. By letter dated June 24, 2004, the Archive sought disclosure of:

- Any reports produced by the Future Security Strategy Study Group set up by the Department of Defense in compliance with the National Security Study Directive 6-83 issued on April 18, 1983.

187. Through a letter dated October 29, 2014, DOD provided several documents (92) pages as responsive to the Archive's request. DOD informed the Archive that the withheld information in the responsive documents was exempt from release because it was properly classified in accordance Executive Order 13526.

188. On November 18, 2014, the Archive filed an administrative appeal requesting further review of the withheld information so that it could be determined whether more of it can be declassified. Furthermore, the Archive requested that the reviewers take into consideration a substantially declassified 1987 "Report to Congress on Strategic Defense System Architecture," which includes substantive and relevant information. The Archive further explained that the declassified public record nature of such information may authorize DOD to declassify more information without harming national security.

189. On November 19, 2014, DOD acknowledged receipt of the appeal and requested a time extension due to a work overload.

**(41) Top Secret Records from ACDA Files, 1970s: Interagency Report on “Threat to US Interests in Asia” (Archive Request No. 20030853DOS075, Agency Case No. 04-A-1257-A1)**

190. By letter dated August 21, 2003, the Archive sought from the State Department disclosure of:

- material from ACDA accession 383-98-0162:

Box 1:

- a) Consequence of Development of nuclear weapons by Additional Countries Up to 1975, Joint Intelligence Committee, May 1966
- b) Project Great Circle II Document, Forwarding Of, October 1966

Box 5:

- a) Report on Chinese Communist High Command Decision making: A Resume of Seminars Sponsored by the Assistant Secretary of Defense for Systems Analysis, June 1970
- b) NSSM 69--U.S. Nuclear Policy in Asia, June 1970
- c) The Role of the Sufficiency Criteria in Strategic Force Planning, May 1970

Box 7:

- a) NSSM-84: US. Strategy and Forces for NATO, Volumes I and II, October 1970

Box 8:

- a) NSSM-69: The Threat, May 1971

Box 9:

- a) Report on National Security Decision Memorandum-95 Tactical Theater Nuclear Forces, June 1971

Box 10:

- a) DPRC Meeting on NSSM-69: U.S. Strategy and Forces in Asia, July 1971
- b) Strategic Program: Strategic Flexible Response and Strategic Command and Control Papers, August 1971
- c) Chinese Strategic Options-NSSM 69, September 1971

Box 11:

- a) U.S. Strategy and Forces for Asia: NSSM-69, October 1971

- b) DPRC Meeting, NSSM-69, November 1971
- c) Disarming Strike Analysis--NSSM 69, November 1971
- d) Asia Nuclear Strategy Issue Paper (NSSM 69), November 1971

Box 13:

- a) NAC Strategic Balance Briefing Request, March 1972

Box 14:

- a) National Security Decision Memorandum-95 Follow on Study--Tactical nuclear weapons in NATO, July 1971
- b) Memorandum to the President: SALT Position Minuteman Vulnerability, March 1971

Box 15:

- a) JCS Memorandum on Guidance for Further Study of Strategic Objectives and Alternatives, August 1972

Box 17:

- a) ACDA Memorandum on Single Integrated Operational Plan (SIOP) Expansion Studies, April 1973
- b) Bureau of Intelligence and Research (INR) Report on Soviet ICBM MIRV Developments, September 1973
- c) ACDA Memorandum: Tactical Nuclear Warfare Doctrine, October 1973

Box 18:

- a) ACDA Memorandum: Memorandum for the Director: Tactical Nuclear Warfare Doctrine
- b) NSC Memorandum on Papers on Nuclear Policy, February 1975

191. Through a letter dated October 29, 2014, the State Department provided a final response to the Archive's request and provided several documents as responsive. However, an interagency document from June 1970 regarding "The Threat to U.S. Interests in Asia," was withheld in its entirety. The State Department stated that it had transferred this case to DOD.

192. On December 12, 2014, the Archive filed an administrative appeal with DOD requesting further review of the withheld information so that it may be determined whether more of it can be declassified. Furthermore, the Archive argued that significant and substantive information can be declassified from the withheld document without harm to national security.

**(42) 1984-1986 Defense Records (Archive Request No. 20050497DOD038, Agency Case No. 05-A-1534-A1)**

193. By letter dated May 4, 2005, the Archive sought disclosure of:

- Any documents on strategic missile defense or U.S. nuclear strategy (including targeting policy) that may be found in the following files in Department of Defense accessions held at the Washington National Records Center:

I. Accession 300-87-0023, 1984 Official Records (Top Secret) of The Secretary and Deputy Secretary of Defense and the Executive Assistant to the Secretary and Deputy Secretary of Defense, box 1:

- a. 334 NSPG (May-Sep)
- b. 334 NSPG (Jan-Mar)
- c. 337 State
- d. 337 WH

II. Accession 330-88-0058, 1985 Official Records (Top Secret) of The Secretary and Deputy Secretary of Defense and the Executive Assistant to the Secretary and Deputy Secretary of Defense, box 1:

- a. 334 NSC
- b. 334 NSPG
- c. 337 State
- d. 373.24

III. Accession 300-88-0040, 1986 Official Records (Top Secret) of The Secretary and Deputy Secretary of Defense and the Executive Assistant to the Secretary and Deputy Secretary of Defense

1. box 1:
  - a. 333 Weinberger
  - b. 334 CPPG
  - c. 334 NSC
  - d. 334 NSPG
  - e. 334 SIG
  - f. 337 WH

2. box 2: USSR 337

194. Through a letter dated September 29, 2016, DOD released an excised version of a memorandum from Secretary of Defense Weinberger to the National Security Adviser concerning “Comments on Your Post-Reykjavik Follow-Up.”

195. On November 2, 2016, the Archive filed an administrative appeal requesting further review of the excised portions of the memorandum so that it could be determined whether more of it can be declassified. Furthermore, the Archive noted that the White House paper that Weinberger was commenting on, “Post-Reykjavik Follow-Up” has been declassified in its entirety. The Archive explained that taking into consideration that declassification, it should be possible to declassify Weinberger’s comments in their entirety without harm to foreign relations or national security.

196. On November 22, 2016, DOD acknowledged receipt of the appeal and requested a time extension due to a work overload.

**(43) Defense Department Records on China from Early 60s (held at NARA)  
(Archive Request No. 970871DOD047, Agency Case No. 08-A-0236-A1)**

197. By letter dated September 16, 1997, the Archive sought from NARA disclosure of:

- Copies of any documents concerning Chinese (PRC) nuclear weapons policies or programs, including prospective or past nuclear weapons tests, delivery systems, and air defense systems, and/or U.S. policy toward the Chinese nuclear program, in the following files from Record Group 330, Department of Defense Records, held at the Federal Records Center at Suitland, Md.:

1. Accession 67-A-4564, Records of the Assistant Secretary of Defense (International Security Affairs), Country Files for 1963:

Box 3. Files: China, Communist (six folders)

2. Accession 68-A-306, Records of the Assistant Secretary of Defense (International Security Affairs) for 1964:

Box 28. Files: China, Communist (two folders)

198. Through a letter dated June 3, 2016, DOD, through NARA, released several documents from 1963. However, eighteen documents (580 pages) were heavily excised or exempted.

199. On August 1, 2016, the Archive filed an administrative appeal limited to the eighteen excised or exempted documents and requested that they be reviewed so that it could be determined whether additional information from them can be declassified. Formerly highly sensitive information on the subjects contained in the excised and exempted documents, produced during 1963, had been declassified over the years. The Archive argued that due to the declassification, reviewers of the appeal may be enabled to declassify similar information without harm to national security or foreign relations.

**(44) State Department Files on NSC (NARA) (Archive Request No. 99-A-0695-A2, Agency Case No. NGC16- 083A)**

200. By letter dated May 12, 1997, the Archive sought from NARA disclosure of:

- Copies of the following withheld items from Record Group 59, Department of State Records:
  - A. General Files on NSC Matters, 1969-1972, NND 979503:
    1. Box 2: tabs 2, 3, and 4
    2. Box 4: tabs, 2, 4, and 5
    3. Box 7: tabs 1 (2 different tabs 1), 2, 7, and 8
    4. Box 8: tabs 1 and 2
    5. Box 11: tabs 1, 2, and 3 [if these documents have to do with Netherlands and nuclear subs, I withdraw this part of the request]
    6. Box 12: tabs 1, 2, and 3
    7. Box 13: tab 1
    8. Box 14: tabs 1 and 5 (in file: NSC-U/SEC Com Misc. Memos)
    9. Box 14: tabs 1 and 2 (in file NSC U/SM Misc Memos 1972)
    10. Box 15: tab 1
    11. Box 17: tabs 2 and 4
  - B. Executive Secretariat, Conference Files, 1966-1972, NND 979506, Box 76, files on "Secretary's Trip to East Asia, July-August 1969", box 76, tab 4.

201. Through a letter dated June 13, 2016, NARA released several documents responsive to the Archive's request that had been excised by DOD . The release included

document ID 479721, an excised briefing paper concerning “SALT – NSC Meeting 2:00 p.m. June 29.”

202. On August 10, 2016, the Archive filed an administrative appeal limited to document ID 47921 seeking further declassification review of the massively excised document. The Archive noted that considering previous declassification releases concerning the SALT I process inside the Nixon administration during June 1971 it should be possible to release more information from the single document at issue without harm to national security.

**(45) Records on Nixon-Era National Security Study Memoranda (AF Litigation) (Archive Request No. 20040952AIR047, Agency Case No. 06-A-1954-A1)**

203. In letter dated August 20, 2004, the Archive sought from the Air Force disclosure of:

- Copies of documents from two accessions of Air Force records, Record Group 341, held at the Federal Records Center, Suitland, MD:

I. Accession 341-75-855:

Box 1:

A. File RL (69) 20 Atomic Weapons (1 Jan. 69):

1. Letter from AFXDOC, 6/26/69, Review of an Array of Nuclear Warfare Scenarios
2. Letter from AFXDOC, 2/7/69, Review of Scenarios for NUWARs

B. File RL (49-3) ICBM (1 Jan. 69):

1. Letter from AFXPFSO, 7/23/69, Hard Target Kill (HTK) Requirements
2. Letter from AFXDOC, 7/17/69, Hard Target Kill Requirements

Box 2:

A. File (69) 73-1 RAND (1 Jan. 69):

1. Letter from AFXDP, 12/12/69, RAND Participation in NU-OPTS III

II. Accession 341-75-852:

Box 1:

A. Folder #2

1. Brief, 10/11/69, JCS Sponsored Exercise High Heels 69

2. Brief, 12/0/69, Briefing for the Director (DSTP) on War Game, SIOP 4F Vs RISOP 69

B. Folder #3:

1. Brief, 11/20/69, NSSM-64, U.S. Strategic Capabilities

III. Accession 341-75-556 (Records of USAF SAB):

Box 3:

- A. Folder: Nuclear Panel Intelligence Meeting, 3-4 March 1970
- B. Folder: Nuclear Panel, Review of Kill Criteria for nuclear weapons, March 1970

IV. Accession 341-75-857:

Box 1:

- A. Folder RG (70) 70-71 Correspondence (Speeches):
  1. Letter from XO, 12/10/70, Briefing on US SSBNs, with attachment

Box 2:

- A. Folder RL 70 (71) Studies (1 Jan 70):
  1. Sino-Soviet Interaction: A Qualitative Assessment, Project Triad 6/70
  2. Sino-Soviet Conflict, Its Implications for U.S. Strategic Planning in the 1970s (Project Triad Report), 8/70”

204. On November 28, 2005, the Air Force informed the Archive that it had transferred the request to NARA.

205. Through a letter dated August 11, 2016, DOD through NARA released several excised documents as responsive to the Archive’s request.

206. On September 26, 2016, the Archive filed an administrative appeal with NARA seeking further declassification review of the excised information. The Archive questioned whether so much information needed to be withheld considering the documents at issue were at least 50 years old.

207. On December 9, 2016, DOD acknowledged receipt of the appeal and requested a time extension due to a work overload.

**(46) JCS Documents on Targeting Issues from 1961 (NARA) (Appeal No. 12-A-0124-A1, Archive Case No. (NARA #) NGC16- 091A)**

208. By letter dated October 3, 1995, the Archive sought from NARA disclosure of of:

- Copies of documents from the following files in Record Group 218, Records of the JCS, 1961 decimal series:

1. 3105 (8 March 1961) (1) Sec. 1: any withheld material
2. 3105 (8 March 1961) (1) Sec. 2:
  - a. DSTP memo to JCS re JSTPS studies, 6/13/61, with enclosures
  - b. DASA memo to S/JCS, 6/26/61, Damage Criteria Study
  - c. Guidance to JCS, National Strategic Attack Policy Damage Criteria, with recommendations, 7/14/61
3. 3105 (8 Mar 61) (3) Sec. 2: any withheld material
4. 3105 (8 Mar 61) (3) Sec. 3: any withheld material
5. 3105 (8 Mar 61) (4):
  - a. JSTPS to JCS, 5/3/61, with Study of Target Value Criteria
  - b. Director, JSTPS to JCS, with Minutes of Target Weighting Conference, 6/15/61
  - c. Report by J-2, 11/15/61
  - d. Decision on JCS 2056/257, 11/23/61
  - e. Memo from JCS to Dir/STP, 11/27/61
6. 3105 Joint Planning (13 September 1961): briefing to President Kennedy on SIOP-62

209. Through a letter dated August 23, 2016, DOD through NARA released several documents in excised form.

210. On September 13, 2016, the Archive filed an administrative appeal with NARA requesting further declassification review of the excised portions of the documents provided as responsive. Plaintiff limited the appeal to five documents.

**(47) State Department Records at NARA (John Irwin Files) (Archive Request No. 980476NAR012, Agency Case No. NGC16- 079A)**

211. By letter dated September 29, 1998, the Archive sought from NARA disclosure of:

- Copies of the following documents in Department of State Records, RG 59, Records of Under Secretary of State John Irwin, 1969-73, NND 981511:
  1. box 1: tabs 1 and 2
  2. box 2: tabs 4, 10, 11, and 12
  3. box 3: tabs 15 and 17
  4. box 4: tabs 19, 20, 29 through 32
  5. box 5: tabs 34 through 40

212. Through a letter dated June 21, 2016, DOD through NARA released several excised documents as responsive to the Archive's request.

213. On July 29, 2016, the Archive filed an administrative appeal with NARA seeking further declassification review of the denied information, including nineteen documents withheld in part and two documents withheld in full. The Archive suggested that reviewers of this appeal consider previously declassified information, which it described in detail in the appeal.

214. On August 1, 2016, NARA informed DOD of the Archive's appeal.

**(48) Department of State Records from 1960s at NARA (Archive Request No. 980210NAR004, Agency Case No. 12-A-0126-A1)**

215. By letter dated April 22, 1998, the Archive sought from NARA disclosure of:

- Copies of the following documents from Record Group 59, Department of State records:
  - I. Records of the Deputy Special Assistant for Politico-Military Affairs, Subject Files, 1961-1968, NND 98524, box 7, tabs 6 and 7.
  - II. Records of the Deputy Assistant Secretary for Politico-Military Affairs, Subject Files, 1961-1968, NND 979566, box 23:
    - a. Defense Affairs NATO SPECOM: tabs 23/1 through 23/4
    - b. Defense Affairs NESCOM Report Def 18-2: tabs 23/14, 15 and 18
    - c. Defense Affairs NATO Speccom-1967: tabs 23/5 through 9
  - III. Records of the Deputy Special Assistant for Politico-Military Affairs, Subject Files of the Special Assistant for Arms Control and Aerospace, 1958-1966, NND 989528:
    - a. box 5: file "Nuclear Weapons-Gilpatric Committee 1964": tabs 4 through 8
    - b. box 12: tabs 1-86 through 1-102

IV. Records of the Deputy Special Assistant for Politico-Military Affairs,  
Records Relating to Arms Control and Disarmament, 1961-1966, NND  
98527, box 4, tabs 4/2 and 4/6

216. Through a letter dated July 1, 2016, NARA informed the Archive that DOD had withheld several documents in part or exempted them in their entirety.

217. On July 27, 2016, the Archive filed an administrative appeal with NARA seeking further declassification review of the denied information and limited to three documents described in detail in the appeal.

218. On January 6, 2017, DOD received the Archive's appeal.

**(49) State Department Records on Nuclear Relations with Canada  
(Archive Request No. 951407NAR038, Agency Case No. 12-A-  
0081-A1)**

219. By letter dated December 11, 1995, the Archive sought from NARA disclosure of:

- Copies of documents from record group 59, Department of State records, Special Assistant to the Secretary for Atomic Energy and Disarmament, NND 949671, as indicated on the attachment.

220. Through a letter dated June 9, 2016, DOD through NARA informed the Archive that several documents had been released in part or exempted in their entirety as responsive to the Archive's request.

221. On July 20, 2016, the Archive filed an administrative appeal with NARA seeking further declassification review of the denied information. The Archive limited the appeal to only documents that had been withheld in full in tabs 2, 4, 15, 19, and 21, and to the following excised documents: IDs numbers 31422531, 31422514, 31422690, 31422690, 31422510, and 31422529, 31422477, and 629683.

222. On June 5, 2017, DOD received the Archive's appeal.

**(50) Defense Planning Guidance (Archive Request No. 20080314DOD025, Agency Case No. 09-A-0002-A1)**

223. By letter dated March 8, 2008, the Archive sought disclosure of:

- Accession 330-94-0070, Retrospect Files of the Under Secretary of Defense for Policy:
  1. Box 1: "Proliferation Control Initiative"
  2. Box 5:
    - a. Presidential Nuclear Initiative
    - b. NATO Nuclear Strategic Policy Force Structure (HLG)
  3. Box 6: DPG Selected April Drafts

224. Through email messages, DOD informed the Archive that it had released an excised version of the "Defense Planning Guidance, FY 1994-1999."

225. On October 4, 2017, via email, the Archive filed an administrative appeal seeking further declassification review of the denied information. The Archive explained that with the passage of 25 years since the document was prepared, it should be possible to release significantly more of its contents without harm to national security or foreign relations.

226. On October 5, 2017, DOD acknowledged receipt of the appeal and requested a time extension due to a work overload.

**(51) Defense Department Documents from 1987 (Archive Request No. 20051660DOD119, Agency Case No. 06-A-0393-A1)**

227. By letter dated November 18, 2005, the Archive sought disclosure of:

- Box 1 of accession 330-89-0023; 1987 Official Records (Top Secret) of The Secretary and Deputy Secretary of Defense and the Executive Assistant to the Secretary and Deputy Secretary of Defense [TS]
  - a. file 334:
    - x43301 WH NSC (Green) 22 May 87, C1
    - x43301 WH NSC (Green) 1 Jun 87, C1
    - x44946 WH NSC (Green) 21, Oct 87, C1
    - x45526 WH NSC (Stevens) 16 Dec 87, C1
    - x4594 WH NSC (Stevens) 28 Dec 87, CR2

b. file 334 NS:

X41641 WH NSC (Green) 5 Jan 87, CR2  
X41694 ES (Lemon) 9 Jan 87, C4  
x4717 AE (Barker) 28 Sep 87, C1

c. file 34 NSPG:

X42046 ISA (Armitage) 11 Feb 87, C1  
X43491 ISA (Armitage) 28 May 87, C1  
X44036 WH NSC (Green) 24 Jul 87, C1

d. file 334 SIG

X41681 Senior Interagency Group, 7 Jan 87, C3  
X42775 SIG (Intelligence) 14 Apr 87, C3  
X43131 SIG (Intelligence) 5 May 87, C4A

e. file 337 State

42163 USP 25 Feb 87, C1  
X51398 Special Tank Session 26 Sep 87, C/WI

f. file 373.24

x1777 WH NSC (Green) 16 Jan 87, C7

228. Through a letter dated September 29, 2017, DOD released two excised documents from 1987 and further informed the Archive that an additional document had been denied in its entirety.

229. On November 1, 2017, the Archive filed an administrative appeal seeking further declassification review of the denied information. The Archive explained that with the passage of 30 years since the document was prepared, it should be possible to release significantly more of its contents without harm to national security or foreign relations.

230. On November 1, 2017, DOD received the Archive's appeal and requested a time extension due to a work overload.

## COUNT I

### **Violation of FOIA by Failing to Timely Process the Archive's Appeals**

231. The Archive hereby incorporates the allegations in ¶¶ 1–230 above.

232. DOD has failed to comply with the statutory time limits in 5 U.S.C. § 552(a)(6)(A)(ii) and (a)(6)(B) with respect to Requests 1–51 above.

233. The Archive has therefore exhausted its administrative remedies under 5 U.S.C. § 552(a)(6)(C) is entitled to judicial review of DOD’s FOIA withholdings under 5 U.S.C. § 552(a)(4)(B).

234. Pursuant to 5 U.S.C. § 552(a)(4)(B) this Court has the authority to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from The Archive.

235. DOD has not, to date, made the Archive aware of any “unpredictable” FOIA workload that could support a showing of “exceptional circumstances” under 5 U.S.C. § 552(a)(6)(C), nor has DOD made “reasonable progress in reducing its backlog” of pending FOIA appeals.

236. The Archive is therefore entitled to injunctive relief including the declassification and release of requested records under 5 U.S.C. § 552(a)(4)(B) or prompt completion by DOD of the pending appeals and prompt release of any documents declassified following such review.

## COUNT II

### **Ongoing Violation of FOIA by Engaging in a Pattern or Practice of Undue Delay in Processing FOIA Appeals**

237. The Archive incorporates the allegations set forth in ¶¶ 1–230 as if set forth fully herein.

238. DOD’s failure to timely process the Archive’s fifty-one pending appeals, many now more than ten years old, demonstrates a pattern and practice of unexplained and unjustified delay in processing FOIA appeals.

239. This pattern or practice includes failing to process FOIA appeals within the statutory time limits established in 5 U.S.C. § 552(a)(6)(A).

240. This pattern or practice also includes DOD's repeated failure to set forth any "unusual circumstances" resulting in such delays or to specify any alternative timeframe for processing an appeal under 5 U.S.C. § 552(a)(6)(B).

241. DOD's pattern or practice of failing to timely process the Archive's FOIA appeals has hindered the Archive's mission of documenting major elements of the U.S. nuclear posture and making such declassified information widely available to scholars and the interested public.

242. This pattern or practice will also continue to injure the Archive going forward because continuing to submit FOIA requests to DOD and to appeal regarding any documents withheld in response to those requests remains critical to the Archive's mission.

243. The Archive is therefore entitled to injunctive relief that, in addition to addressing the fifty-one appeals at issue in this case, compels DOD to improve its processes for handling FOIA appeals so that future appeals by the Archive do not remain in limbo for more than a decade.

### COUNT III

#### **Ongoing Violation of FOIA by Engaging in a Pattern or Practice of Undue Delay in Releasing Records Presumptively Subject to Automatic Declassification**

244. The Archive incorporates the allegations set forth in ¶¶ 1–230 as if set forth fully herein.

245. Section 3.3(h) of Executive Order 13529 provides that classified records "shall be automatically declassified on December 31 of a year that is no more than 50 years from the date of origin" unless they would "clearly and demonstrably be expected to reveal . . . the identity of a

confidential human source or a human intelligence source[] or [] key design concepts of weapons of mass destruction.”

246. The Archive’s Requests 2, 4, 5–10, 12–13, 15–16, 20, 22, 23, 26, 30, 32–37, 43–46, and 48–49 above seek records that are more than 50 years old.

247. DOD has not indicated that it is withholding documents in response to these requests because they would reveal human sources, intelligence sources, or key weapons design concepts.

248. The records sought in these Requests should thus have been automatically classified prior to the date of this Complaint.

249. DOD’s failure to timely process these particular appeals thus demonstrates a pattern and practice of unexplained and unjustified delay in processing FOIA appeals for which no elaborate or extensive review process should be required.

250. This pattern or practice injures the Archive both retrospectively and prospectively in the same manner described in Paragraphs 241–42 above.

251. The Archive is therefore entitled to injunctive relief that, in addition to providing the relief sought in Counts I and II above, compels DOD to promptly handle FOIA appeals seeking documents more than 50 years old and thus presumptively subject to automatic declassification so that future appeals by the Archive seeking such records do not unnecessarily remain in limbo for more than a decade.

### **REQUEST FOR RELIEF**

WHEREFORE, the Archive asks that this Court:

- a. Expedite this case in accordance with 28 U.S.C. § 1657(a);

- b. Declare DOD's continued delay in processing the Archive's appeals unlawful under FOIA;
- c. Declare that DOD has engaged in a pattern or practice of unlawful delay in processing FOIA appeals;
- d. Declare that DOD has engaged in a pattern or practice of unlawful delay in declassifying and releasing records presumptively subject to automatic declassification;
- e. Order DOD to declassify and release all records at issue that are no longer properly classified under Executive Order 13529;
- f. Order DOD to promptly resolve all of the Archive's outstanding appeals on a reasonable timeline;
- g. Award the Archive its costs and reasonable attorneys' fees incurred in bringing this action pursuant to 5 U.S.C. § 552(a)(4)(E); and
- h. Grant such other relief as the Court deems just and proper.

Dated: December 23, 2021

Respectfully submitted,



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