

Ideas on the Open Government Plan from the National Security Archive

NOTE: Trying to post this in the Open Gov Plan area, but looks like I don't have requisite permissions.

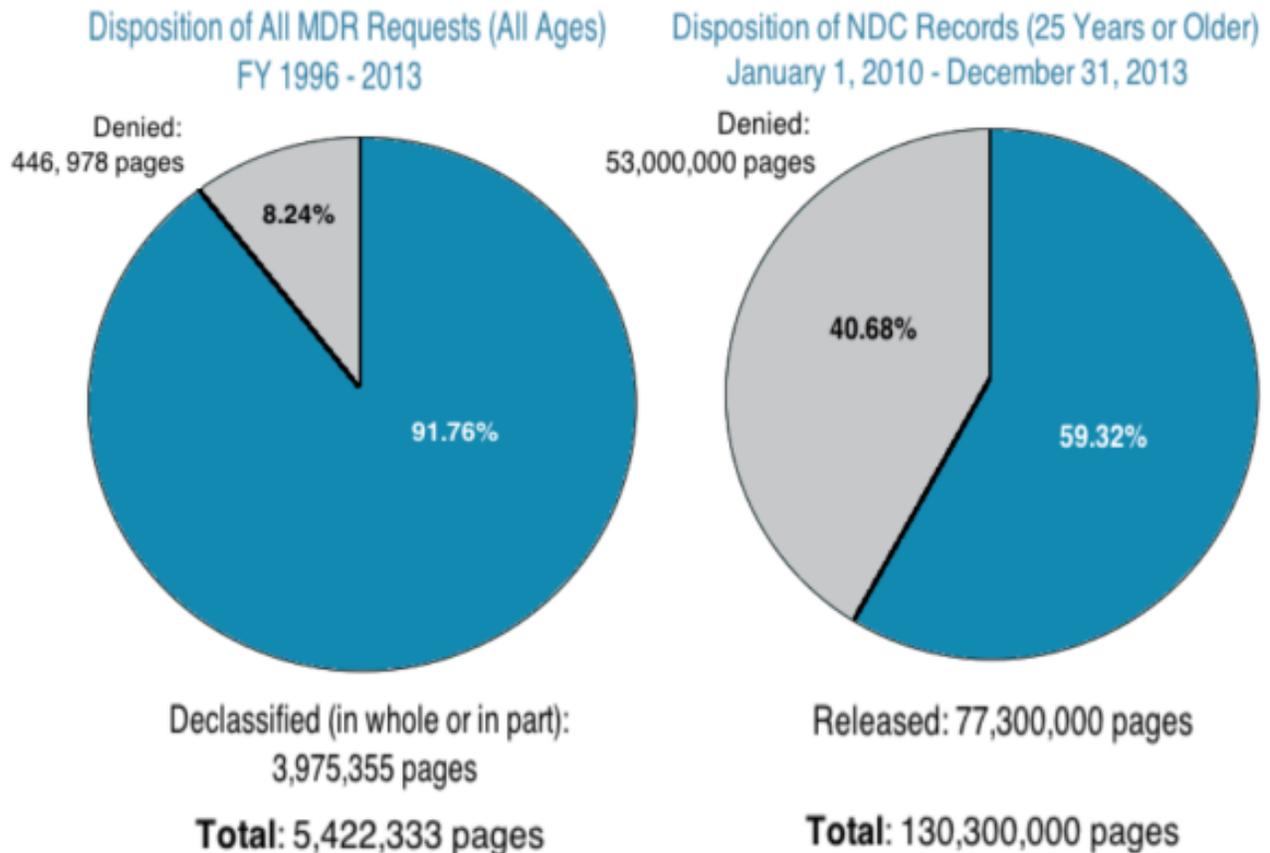
Thanks for accepting the public's ideas! Here are some ideas from the National Security Archive that we also posted here: [What The National Archives Can Do for *Truly* Open Government](#).

The National Archives and Records Administration is accepting comments on what people think should be in their next [Open Government Plan](#). NARA has done a very good job improving its services to greater benefit the public over the last few years. This includes expanding its easy-to-use online catalog (especially the user [annotations and tagging](#)!) and establishing the [History Hub](#), a type of message board where NARA employees quickly field queries from the public. Other federal agencies would do very well to follow NARA's lead in encouraging and expanding public engagement.

While the innovations described above are valuable and necessary, the actual, physical act of providing the public access to records that were once classified or unavailable remain the essence of Open Government. The comments and suggestions below from the National Security Archive therefore focus on what needs to be a primary focus of the Open Government Plan — declassification.

Ramp Up and Expand the National Declassification Center

The National Declassification Center must [continue improving](#) its release rate of declassified documents to as high as possible; it is not yet “[releasing all it can](#).” The Center has clearly [made gains](#) —not least of which is “indexing on demand,” where the NDC provides records that were previously inaccessible to researchers within days— but to become President Obama's successful flagship initiative, the NDC must continue to improve. As the Public Interest Declassification Board has recommended, “[wasteful, expensive](#)” pass fail review and unnecessary equity referrals need to end as soon as possible.



MDR and NDC release rates from the ISOO 2013 Report to the President and the NDC's July 1, 2013 – December 31, 2013 Bi-Annual Report, respectively.

NDC release rates of historic documents (right chart) are lower than the release rate of current documents due to equity re-reviews and page level declassification.

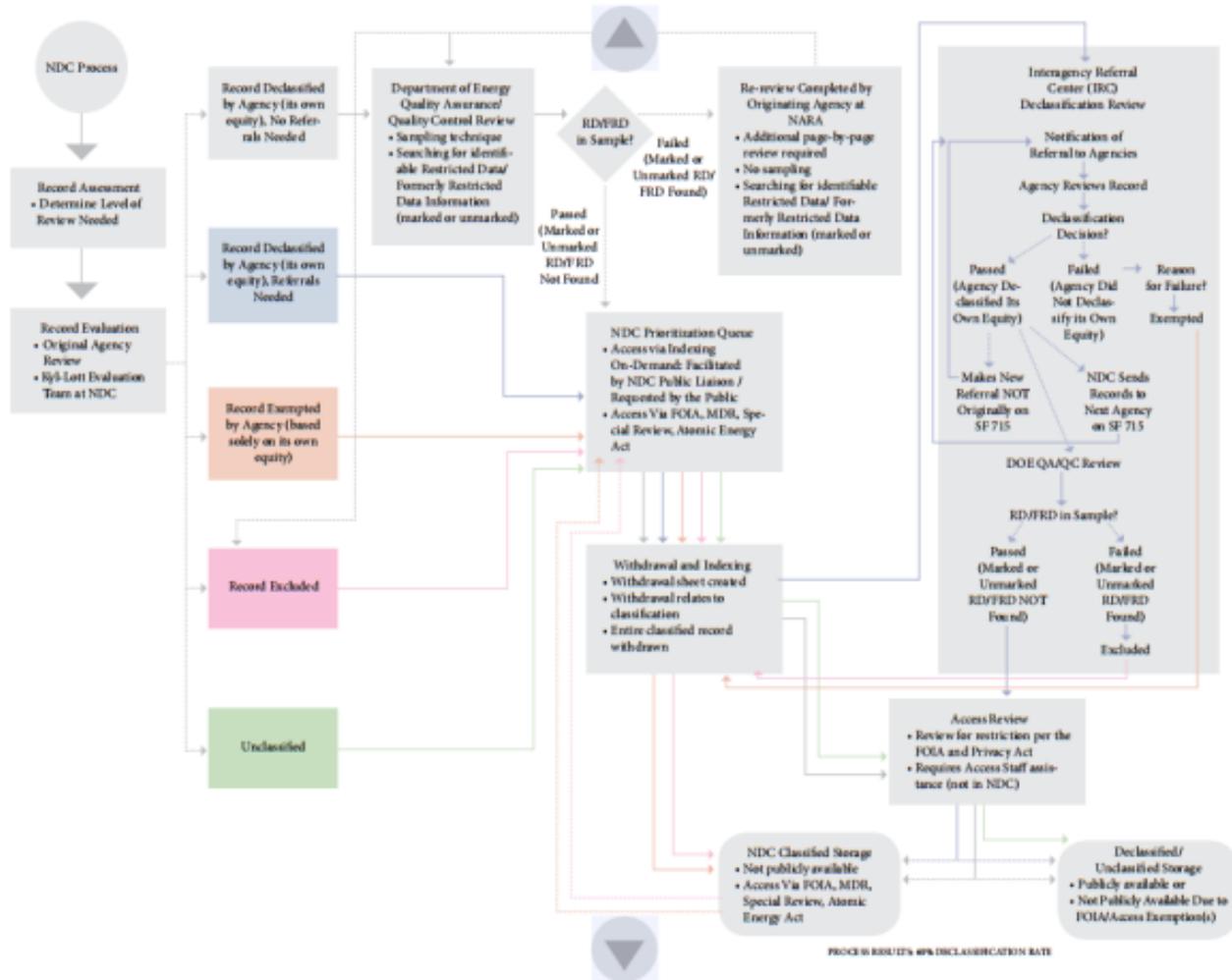
A [survey](#) by the Society for Historians of American Foreign Relations confirms widespread desire for more of a NARA-led focus on promoting efficient and credible declassification. Seventy percent of 784 researchers surveyed described the importance of declassified documents to historical research as “very important and indispensable,” another fourteen percent described declassified documents as “important and necessary.” But twenty eight percent of the respondents described the availability of declassified documents at NARA as “very worrisome” or “disappointing.”

The National Archives and National Declassification Center should work to be standard-bearers of the “3.1 (d) Public Interest Test.” Section 3.1(d) of Executive Order 13526 is the provision that allows agencies to declassify documents even if they are technically “properly classified” –like the [Pentagon Papers](#) or the the [History-101 fact](#) that there were Jupiter missiles in Turkey during the Cuban Missile Crisis.

To do this, NARA’s Open Government Plan should formally adopt the Director of National Intelligence James Clapper’s and DNI General Counsel Bob Litt’s [instruction](#) to declassify historic documents even when they may be technically “properly classified.” Two Sunshine Weeks ago, Litt stated that those with classification and declassification authority [must ask themselves](#)

“not can we classify, but should we?” Litt pointed to Section 3.1 (d) of the Executive Order on Classification 13526, and claimed that declassifiers of historic documents should already be using this authority. In practice, however, they are not.

Section 3.1 (d) states: “In some exceptional cases, however, the need to protect such information may be outweighed by the public interest in disclosure of the information, and in these cases the information should be declassified. When such questions arise, they shall be referred to the agency head or the senior agency official. That official will determine, as an exercise of discretion, whether the public interest in disclosure outweighs the damage to the national security that might reasonably be expected from disclosure.”



Perhaps as helpful as any of its recommendations, the PIDB has “lifted the curtain” on the convoluted, “laborious,” “unsustainable,” re-review process that documents at the National Declassification Center are herded through. The National Security Archive has long called for a simplified, single review of these 25-plus-year-old documents.

The National Declassification Center’s still too low but rising declassification rate of 59 percent for documents 25 years old or older is an indicator of over-classification and under-reliance of the “public interest declassification clause” at NARA itself. NARA’s next Open Government Plan could

remedy this problem by establishing a procedure so that declassifiers at NARA, including the National Declassification Center, can easily request that EO 13526 section 3.1 (d) be used to declassify technically “properly” classified information that is in the public interest and no longer needs protection.

Declassify the Presidential Libraries

After the National Declassification Center has established its *bona fides* of as having the highest declassification rate of any entity in the federal government, it should focus on ending the backlog at the Presidential Libraries. Currently when a user submits a FOIA to the Libraries, they must wait (often years) only to be told that the documents they requested are classified and need to be requested again under Mandatory Declassification Review (MDR), which also often takes years!

The NDC is nearing the perfect position to systematically and proactively declassify the documents of all Presidential Libraries without forcing customers to submit painstaking FOIA and MDR requests.

NARA has spent great effort asking the public [which documents it should prioritize the declassification of](#). The answer is the highest level documents, the documents at the Presidential Libraries.

Additionally, I suggest that Presidential Libraries should constantly update their finding aids online, providing customers with exact data on which collections are now open, which are still secret, and when the public will likely be allowed to access them.

Celebrate the Release of the Final JFK Assassination Records

NARA’s next Open Gov plan should herald and celebrate NARA’s role in finally releasing the remaining [41,000 JFK assassination documents](#). NARA should frame the issue not so much as a legal requirement, but as celebration that it is finally able to release these extremely-frequently requested documents to the public. NARA should also point out that many of the records released under the JFK Assassination Records Act could have been withheld as “properly classified” under the current classification regime. Their release (and similar releases by the [the Nazi War Crimes and Japanese Imperial Government Records Interagency Working Group](#)) show that many historic records that are technically classified can be released to the public with great benefit and minimal harm.

As it celebrates the final release of the JFK Assassination records, NARA’s Open Government Plan would also do well to reexamine some of the recommendations made by the Assassination Records Review Board, including the fact “that any serious, sustained effort to declassify records requires congressional legislation with (a) a presumption of openness, (b) clear standards of access, (c) an enforceable review and appeals process, and (d) a budget appropriate to the scope of the task.”

Call the Torture Report What It Is: a Federal Record

Finally, the next Open Government Plan should establish the mechanism the Archivist of the United States use to use the power granted to him by the [Presidential and Federal Records Act Amendments of 2014](#) to “direct and effect the transfer of records of a Federal agency determined by the Archivist to have sufficient historical or other value to warrant their continued preservation by the United States Government to the National Archives of the United States.”

As the National Security Archive has written, [it is extremely troubling](#) that the Archivist has not already done this for Senate Intelligence Committee’s full report on the Central Intelligence Agency’s use of torture. According to [a November 5, 2015 letter](#) written by Senators Patrick Leahy of Vermont and Dianne Feinstein of California, “personnel at the National Archives and

Records Administration have stated that, based on guidance from the Department of Justice, they will not respond to questions about whether the study constitutes a federal record under the Federal Records Act because the FOIA case is pending.”

Even if it cannot currently be declassified, the Senate Report on Torture –which was transferred from the Senate to executive branch agencies– is clearly a federal record, and, more than that, an important record of the history of the United States.

The [Presidential and Federal Records Act Amendments of 2014](#) explicitly granted the Archivist the power to declare documents like this federal records (even if they cannot currently be released to the public). He should do the right thing, establish the authority of the National Archives to use this power, and declare the Torture Report a federal record –even if it complicates a DOJ FOIA case.

Without this act, many will question the sincerity of the National Archives’ commitment to the essence of truly Open Government.

The National Archives Should Establish Itself as the Principled Leader on Declassification

The National Archives is America’s largest repository of classified documents, and is also the institution best situated to force the enactment of President Obama’s Open Government classification reforms –described in [both](#) Open Government Partnership National Action Plans, his [Executive order on Classification](#), and his [Memo establishing procedures at the National Declassification Center](#).

NARA is also home to the Sunlight-promoting Office of Government Information Services, Information Security Oversight Office, and Interagency Security Classification Appeals Panel –which [overrules agency classification decisions in over 68 percent of its cases](#).

The US National Archives has a major role to embrace in improving the declassification system in America. It should use its next Open Government Plan to establish itself as the federal government’s principled leader on declassification.