Congressional Research Service

Memorandum

March 10, 2006

TO: House Committee on Government Reform
[redacted]

FROM: Harold C. Relyea
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SUBJECT: Disclosure of Security Classified Information

This memorandum responds to a question you asked regarding the disclosure of security classified information. This question and the response to it are set out below.

In the past, prior to the current administration, has a Vice President authorized the disclosure of classified information to journalists on a selective basis?

Background. Prior to 1982, it does not appear that the Vice President was a participant in the security classification program. With antecedents in armed forces information security regulations dating from United States participation in World War I, the presidentially prescribed security classification program was inaugurated with E.O. 8381 of March 22, 1940.[1] Subsequently, a series of executive orders successively modified the program. President Ronald Reagan issued one such directive — E.O. 12356 — on April 2, 1982.[2] Shortly thereafter, on May 7, 1982, pursuant to Section 1.2 of his order, he designated certain officials with authority to security classify information originally as *Top Secret*, *Secret*, or *Confidential*.[3] For the first time, the Vice President was specifically designated with authority to security classify originally and to do so through the *Top Secret* level. Among its provisions, E.O. 12356 indicated that:

> Information shall be declassified or downgraded by the official who authorized the original classification if that official is still serving in the same position; the originator's successor; a supervisory official of either; or officials delegated such authority in writing

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[1] 3 C.F.R., 1938-1943 Comp., pp. 634-635.

[2] 3 C.F.R. 1982 Comp., pp. 166-178.

[3] Ibid., pp. 257-259.

> by the agency head or the senior agency official designated [to direct and administer the agency's information security program] pursuant to Section 5.3(a)(1).[4]

This provision suggested that the Vice President was authorized to declassify any information which he had classified originally or possibly to declassify information contained in records produced by the Office of the Vice President, provided the information in question was originally, not derivatively, classified in the Office of the Vice President. However, such declassification might not permit the public disclosure of the information in question if other requirements for the protection of the information applied.

On April 17, 1995, President William Clinton issued E.O. 12958, which succeeded E.O. 12356 and prescribed new security classification-declassification arrangements.[5] The order provided automatic declassification conditions, including exceptions to this procedure, but relocated the terms of the paragraph quoted above from E.O. 12356 to a definition of "Declassification authority" in Section 3.1, which meant:

> (1) the official who authorized the original classification, if that official is still serving in the same position;
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> (2) the originator's current successor in function;
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> (3) a supervisory official of either; or
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> (4) officials delegated declassification authority in writing by the agency head or the senior agency official.[6]

This language again suggested that the Vice President was authorized to declassify any information which he had classified originally or to declassify originally classified information contained in records produced by the Office of the Vice President, but such declassification might not permit the public disclosure of the information in question if other requirements for the protection of the information applied.

In an October 13, 1995, directive, President Clinton authorized the Vice President, among other officials, to security classify information originally through *Top Secret*.[7]

President George W. Bush issued an order — E.O. 13292 — on March 25, 2003, which amended E.O. 12958.[8] Among the modifications made by the new order were the vesting of the Vice President with authority coequal to that of the President to security classify information originally. While the definition of "Declassification authority" remained unchanged, it is not clear if the change in classification authority for the Vice President in any way modified the declassification authority of the Vice President.

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[4] Ibid., p. 172.

[5] 3 C.F.R., 1995 Comp., pp. 333-356.

[6] Ibid., p. 341.

[7] Ibid., pp. 513-514.

[8] 3 C.F.R., 2003 Comp., pp. 196-218.

Question response. The above review of the Vice President's classification and declassification authority is provided as background to responding to your question. The Vice President appears to have some limited declassification authority. However, it appears that the Vice President is not otherwise authorized to disclose or to direct or to approve the disclosure of security classified information to persons not authorized to receive it. In view of this situation, it is not surprising that, in reviewing the public record of published sources, no instance was found when, in the past, prior to the current administration, a Vice President authorized the disclosure of security classified information to journalists on a selective basis.

I trust this memorandum is responsive to your request. Please do not hesitate to call me at [redacted] if I may be of further assistance regarding this, or any other, matter.