Long-overdue reform of the nation’s dysfunctional classification system is an executive branch priority that is ripe for implementation.

The Problem: “Overclassification” – the unnecessary classification of information – is widespread within the federal government. The evidence on this point is overwhelming. Since the inception of the classification system, no fewer than eight blue-ribbon commissions or special congressional investigations, including the 9/11 Commission, have found overclassification to be a significant problem. Current and former government officials have estimated that anywhere from 50 to 90 percent of classified documents could safely be released. Moreover, when a member of the public asks an agency to declassify a specified document through a process known as “Mandatory Declassification Review,” the agency decides in 90 percent of cases that some or all of the information can be released.

In part due to overclassification, the amount of classified information that exists today is staggering. There were more than 50,000 new secrets created in FY 2015, and more than 50 million derivative classification decisions. There are also more than 2,000 agency classification guides, many of which are hundreds of pages long. The Pentagon’s list of code names for highly classified “Special Access Programs” runs 300 pages, leading Director of National Intelligence James Clapper to remark, “There’s only one entity in the entire universe that has visibility on all SAPs – that’s God.”

The current declassification system is incapable of keeping up with the petabytes of classified information being generated each year. The executive order on classification requires information to be “automatically” declassified at 25 years, but in practice, declassification is anything but automatic. Multiple agencies engage in lengthy “equity” reviews, and 1999/2000 legislation (the “Kyl-Lott” amendment) mandates further review for the potential presence of nuclear information. The National Declassification Center then performs yet another page-level review that can result in the withholding of an entire document if even a single word remains classified.

The Costs: Overclassification comes with several costs beyond the financial ones (which totaled $16.7 billion in FY 2015). It unnecessarily denies Americans information they need to engage in the democratic process. It inhibits the rule of law by providing a shield for government misconduct. And it impedes robust checks and balances by hindering both congressional and judicial oversight.

Overclassification also puts our national security at risk, in at least three ways. First, it inhibits information sharing both inside and outside government, making it harder to “connect the dots” and avert terrorist attacks or other breaches. Second, when so much information is needlessly classified, the burden of protecting all that information may cause busy officials to cut corners; worse, some may lose respect for the system and may leak information deliberately or negligently. Third, the prevalence of classified information necessitates granting clearances to an extremely large number of people (around 4.5 million in FY 2014) – not a good recipe for keeping secrets.

The Steps Already Taken: President Obama took some initial steps toward reining in overclassification and accelerating declassification. Under his executive order, no information may remain classified indefinitely; classifiers must not classify information if they have significant doubt about whether it merits protection; officials must receive training in avoiding overclassification; and agencies must perform a review of their classification guidance every five years. President Obama also established the National Declassification Center to help coordinate and facilitate
declassification, and he established a White House-led Classification Reform Committee consisting of senior agency officials.

These steps have helped to reduce both yearly classification numbers and the backlog of documents awaiting declassification, but much more needs to be done. Without stricter criteria for classifying information, accountability for improper classification, and truly “automatic” declassification, the problem of overclassification will continue.

**The Opportunity for the Clinton Administration:** The classification system is a government problem that became a campaign issue when it was discovered that a small number of e-mails on Secretary Clinton’s private server, despite not being properly marked, included information considered classified by the Intelligence Community. Reports that the “top secret” information in some of these e-mails consisted of references to the CIA’s drone strike program – a program that is well-known to our allies and our enemies alike – led many experts, including high profile national security figures such as former Defense Secretary Robert Gates, to comment on the problem of overclassification. Clinton campaign officials pointed out that the e-mails were another example of “overclassification run amok” and called for their release.

With the problem of overclassification highlighted during the campaign, a Clinton administration would be in an ideal position to attempt reform. There is a level of public awareness about the problem that did not exist before, which would smooth the way for changes. In addition, the framing of the issue during the campaign has eroded public trust both in our government and in Secretary Clinton. Strong reform initiatives would help to rebuild that trust.

There is a natural vehicle for reforming the classification system. Each incoming president generally issues an executive order on classification (President Obama issued his in Dec. 2009). Reforms can be built into the order; overclassification can largely be addressed without the need for legislation.

**The Solutions:** Several organizations have put extensive thought and research into classification reform; they could serve as a resource to the Clinton administration. In the meantime, below are some concrete reforms that could be incorporated into an executive order and that would go far toward fixing the dysfunctional classification system:

- Clarify that “intelligence sources and methods” may be classified only if their disclosure would harm national security.
- Require agencies to institute mechanisms to ensure accountability for improper classification, including classification of information that reveals government misconduct.
- Create a task force, or work with Classification Reform Committee, to develop stricter and more specific criteria for classification.
- Establish a “fast-track” process for members of the public to seek declassification of records that would inform current public debates, and encourage agency officials to engage in discretionary release of such information.
- Put strict limits on the classification of agency rules, controlling legal interpretations, and other documents that carry the force of law.
- Institute truly “automatic” declassification for operation-specific information classified for less than 25 years.
- Institute a system for review and declassification of all other information classified for less than 25 years.
• Empower the National Declassification Center to declassify records at 25 years without review by equity-holding agencies, and eliminate wasteful, expensive page-level review.

Endorsed by:

Prudence S. Adler, Associate Executive Director, Association of Research Libraries
Tom Blanton, Executive Director, National Security Archive
Danielle Brian, Executive Director, Project on Government Oversight
Tiffiny Ying Cheng, Co-Director, Fight for the Future
Louis Clark, President, Government Accountability Project
Sophia Cope, Staff Attorney, Electronic Frontier Foundation
Elizabeth Goitein, Co-Director, Liberty & National Security Program, Brennan Center for Justice*
Robyn Greene, Policy Counsel and Government Affairs Lead, New America’s Open Technology Institute
Kate Hagan, Executive Director, American Association of Law Libraries
Morton H. Halperin, Senior Advisor, Open Society Foundations**
Katherine Hawkins, Senior Counsel, The Constitution Project
Karin Deutsh Karlekar, Director, Free Expression at Risk Program, PEN America
Michael W. Macleod-Ball, Chief of Staff/First Amendment Counsel, American Civil Liberties Union
Jonathan Manes, Director, Civil Liberties and Transparency Clinic, University at Buffalo School of Law
Alex Mathews, National Chair, Restore the Fourth
Kel McClanahan, Executive Director, National Security Counselors
Patrice McDermott, Executive Director, OpenTheGovernment.org*
Nancy McGovern, President 2016-2017, Society of American Archivists
Toby Nixon, President, Washington Coalition for Open Government
Gregory T. Nojeim, Senior Counsel & Director of Freedom, Security and Technology Project, Center for Democracy & Technology
Chip Pitts, President and Chair, Advocacy for Principled Action in Government
David H. Remes, Legal Director, Appeal for Justice
Daniel Schuman, Policy Director, Demand Progress
Emily Sheketoff, Executive Director, American Library Association Washington Office
Sue Udry, Executive Director, Bill of Rights Defense Committee/Defending Dissent Foundation
Lynn Walsh, President, Society of Professional Journalists
Anne Weismann, Executive Director, Campaign for Accountability
Robert Weissman, President, Public Citizen
John Wonderlich, Executive Director, Sunlight Foundation
Mark Zaid, Executive Director, The James Madison Project
* Contact these individuals for more information
**Organization included for identification purposes only