

**PIDB recommendation: Convert Formerly Restricted Data to National Security**

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My name is Andrew Weston-Dawkes and I serve as Director of the Office of Classification within the Department of Energy. The Office of Classification is multi-functional in nature; develops policies for RD such as 10 CFR 1045, produces detailed technical guidance for classifiers and conducts declassification reviews for documents under FOIA and Mandatory requests. Last year my office processed 183 FOIA requests, 271 Mandatory requests, 8 FOIA appeals and 8 Mandatory appeals -- many of these sent to us from other agencies.

In addition, DOE plays a major role within the newly devised National Declassification Center at NARA in review of documents under Kyl-Lott public law provisions meant to prevent the inadvertent release of RD and FRD documents. As such, DOE trains other agency reviewers to recognize RD and FRD and DOE performs quality control checks on record collections supposedly free of such information and near public release. For the President's requirement of review of 400 million pages by 2013, the Department has committed to essentially double its resources within the NDC to make sure that our efforts do not bottleneck the release of documents to the public. In this way, we believe that DOE is serving its dual mission of protecting national security while promoting the release of information to the public.

The Public Interest Declassification Board (PIDB) has recommended changing the Formerly Restricted Data category of information under the control of the AEA to National Security Information under the rules of Executive order 13526. The change would allow FRD

information over 25 years old in NARA records such as the location, numbers and yields of U.S. nuclear weapons to be automatically declassified or declassified over DOE/DoD objections. Historians have pointed out for many years that past stockpile numbers and past locations of nuclear weapons have historical significance and should be released. Many have cited examples of where the government has inadvertently released such information or has been inconsistent in its declassification review efforts for specific documents.

However, the FRD category includes considerable nuclear weapon design information (e.g., safing arming and fuzing, use control information, hardening, etc.) which is well beyond the level of information the public has considered and pursued for release (numbers, storage and locations and yields of nuclear weapons). Because of this, DOE has not supported the simple conversion FRD into NSI.

Going back to the beginning, the FRD category was created in the rewrite of the Atomic Energy Act in 1954. Funny enough, the term FRD is nowhere to be found in the Act but instead is a term of art needed to define its unique character. From the original AEA of 1946 to 1954, the US lost its unique status as the world's only nuclear power, saw a need to promote the civilian use of nuclear energy and reacted to the increasing threat to the security of Western Europe. Congress revised the Act to meet the needs of the nation at that time essentially reaffirming the role of the RD category, but also building in peaceful uses of atomic energy, facilitating greater military use to include the potential use of nuclear weapons to counter Soviet conventional forces and means for international cooperation.

Under the Atomic Energy Act of 1954, Section 142.d permitted the AEC and DoD to remove information **primarily** related to Military utilization from the RD category. Both the AEC and DoD initially wanted the conversion of RD to Defense Information to be narrow in scope but without any other restrictions. This conversion would allow more DoD personnel to have access to this type of information and also shared with our allies in defense of Europe. However, the actual law placed an additional requirement in that information so removed had to be treated as RD when transferred to another nation. This additional requirement meant that this information needed to be readily segregated from other defense information and so the term “Formerly Restricted Data” was created. It also reflected the will of Congress to be aware of what FRD information was being shared and under what conditions. We have records dating back to 1957, showing the DoD seeking legislative change to expand this category of information and to remove the restriction for treating such information as RD on foreign transfer. We also see that from at least 1957, the AEC had realized that certain design information was now included in the FRD category. The AEC counted on the foreign transfer restrictions and protection standards in these agreements to ensure adequate safeguards were in place. The point here is that the AEC rejected the concept of simple conversion of FRD to NSI as early as 1957 realizing that a simple conversion would place design information at higher risk.

If we flash forward to the 1990’s, and after the Cold War, there were a number of classification studies: the 1992 classification policy study, the NRC review of DOE classification policy and practice and the DOE fundamental review. In 1997, the fundamental review recommended the partition of FRD into NSI and RD. A 1998 DOE-DoD joint disposition of the Fundamental

review recommended changes in law to permit the FRD partition. However, more careful consideration by affected parties concluded that the cost and effort to manage such a partition, the judgment that it was unlikely for Congress to change the foreign dissemination restrictions, and the problems discovered at NARA leading up to the Kyl-Lott public law requirements resulted in no changes in the FRD category. In short, up through the year 2000, while policy makers could envision changes to the FRD category, few benefits would result and so they were not pursued.

In sum, the FRD category contains a wide range of information, from historical data on numbers and locations of nuclear weapons to some of the most sensitive design information controlled by both departments. DOE recognizes that for some historical information, the equity truly lies with the DOD and DOS. However, DOE does have considerable equity in FRD that relates to the design or technology of nuclear weapons and has not supported changes to date that would put at higher risk this type of information.

I thank the Board for the opportunity to discuss the FRD category and look forward to your questions.