April 25, 2016

Hon. James R. Clapper
Director of National Intelligence
Washington, DC 20511

Dear Director Clapper:

The undersigned organizations write to express our appreciation for your approach to the upcoming Fundamental Classification Guidance Review (FCGR), as set forth in your March 23, 2016 memorandum to the heads of major intelligence agencies. The memorandum signals a welcome movement in the direction of greater transparency. It requires agencies to consider concrete changes in the way they classify and declassify information, and could help ensure that the recent trend of reduction in classification decisions continues.

As you know, overclassification is a longstanding and widely acknowledged problem in the federal government. Far too much information is unnecessarily classified, is classified at too high a level, or remains classified too long. A periodic review of classification guides can be a potent mechanism for limiting classification activity, but only if the agencies performing the review embrace its goals and devote the necessary resources.

Your memorandum increases the likelihood of a successful FCGR in several ways. By becoming involved in the process yourself and requesting the personal involvement of the agencies' directors, you have conveyed the importance of the endeavor. You asked the directors to consider reducing the number of original classification authorities (OCA) in their agencies, and you led by example in reducing the number of original classification authorities at your own office by more than half. Perhaps most important, you asked the directors to consider implementing a proactive discretionary declassification program. We believe that such a program, if strongly promoted and sufficiently resourced, could both serve the public interest in obtaining timely government information and reduce the burden that the current declassification system places on agencies.

We wish to suggest two additional measures to help ensure the success of the current FCGR. First, while it may be implicit in the directions provided by the Information Security Oversight Office (ISOO), we believe it would be helpful if you explicitly instructed the agency directors to address not only those guidance topics that are obsolete or redundant, but also those that are inappropriately vague. Guidance topics that do not specifically identify the information requiring classification – particularly those that require users to make a determination using subjective criteria – force derivative classifiers to act as OCAs, thus exceeding their authority and opening the door to overclassification. Second, while ISOO recommends that agencies involve external experts in the review process, we suggest that you go further and seek input from a wide range of stakeholders, including members of the public. Secretary of Energy Hazel O'Leary followed this approach when conducting the very first fundamental guidance review in the 1990s, and it was key to the review's success.

Many of our organizations have long been concerned about a lack of transparency and accountability within the intelligence establishment. Both before and under your leadership, we have criticized intelligence agencies for excessive secrecy. We have done so in the genuine hope that improvements would be made, and that we would be in a position to write a letter of support rather than one of opposition. We are happy to have that opportunity today with respect to the initiation of the FCGR process. Please let us know if we can provide any assistance with this process as you and the agencies move forward.

Sincerely,

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Center for Democracy and Technology
The Constitution Project
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