

Jennifer L. Hudson
Director of the Information Management Division
Office of the Director of National Intelligence
Washington, DC 20511

March 25, 2016

Re: ODNI Regulation change to 32 CFR Part 1704 allowing ODNI to charge requesters as high as \$72 per hour for Mandatory Declassification Review requests.

Dear Ms. Hudson:

We, the undersigned organizations committed to government openness and accountability, request that the Office of the Director of National Intelligence (ODNI) withdraw the rule that it published in the Federal Register on February 26, 2016.¹ As written, this regulation could cut off access to the most effective tool the public can use to request declassification of records classified by agencies within the intelligence community, the Mandatory Declassification Review (MDR) program.

ODNI has indicated in response to public comments that it plans to modify the proposed rule.² No official notification of that intent has been given, however, and the public comment period still remains open. Thus, we are submitting our comments to ensure that the widespread concerns over this proposal are entered into the public record. The regulation, which is scheduled to go into effect on April 26, 2016, unless adverse comment is received, states that document searches and declassification reviews will now cost requesters up to \$72 per hour, even if no information is found or released.³ And the fee for photocopying will be five times higher for MDR requests than for FOIA requests.⁴ Throughout the government MDR fees are commensurate to FOIA fees. This regulation, which was entered into the public record without prior notice to public stakeholders, imposes burdensome fees inconsistent with those charged for FOIA requests in other departments. Moreover, under FOIA, Congress stipulated that public interest, educational, journalism, and other fee waivers must be granted, when applicable under the statute.

The effect of the ODNI's new policy would be to price the public out of submitting MDR requests, a result contrary to the Obama Administration's transparency policy in general and its declassification policy under Executive Order 13,526 in particular. It is also contrary to ODNI's Principles of Intelligence Transparency for the Intelligence Community. These Transparency Principles specifically state that 12(a)-4(t)-5(t)13(h)9(

¹ ODNI Direct final rule on the Mandatory Declassification Review Program, 32 CFR Part 1704, published in the Federal Register February 26, 2016: <http://1.usa.gov/1o9lr1t>.

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