CHAPTER XVII—OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE

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PART 1700—PROCEDURES FOR DISCLOSURE OF RECORDS PURSUANT TO THE FREEDOM OF INFORMATION ACT

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Source: 72 FR 45894, Aug. 16, 2007, unless otherwise noted.

§ 1700.1 Authority and purpose.

(b) Purpose in general. This Part prescribes procedures for:
(1) ODNI administration of the FOIA;
(2) Requesting records pursuant to the FOIA; and
(3) Filing an administrative appeal of an initial adverse decision under the FOIA.

§ 1700.2 Definitions.
For purposes of this Part, the following terms have the meanings indicated:
(a) Days means calendar days when ODNI is operating and specifically excludes Saturdays, Sundays, and legal public holidays;
(b) Direct costs means those expenditures which ODNI actually incurs in the processing of a FOIA request; it does not include overhead factors such as space;
(c) Pages means paper copies of standard office size or the dollar value equivalent in other media;
(d) Reproduction means generation of a copy of a requested record in a form appropriate for release;
(e) Review means all time expended in examining a record to determine whether any portion must be withheld pursuant to law and in effecting any required deletions but excludes personnel hours expended in resolving general legal or policy issues; it also means personnel hours of professional time;
(f) Search means all time expended in looking for and retrieving material that may be responsive to a request utilizing available paper and electronic indices and finding aids; it also means personnel hours of professional time or the dollar value equivalent in computer searches;
(g) Expression of interest means a written or electronic communication submitted by any person requesting information on or concerning the FOIA program, the availability of documents from ODNI, or both;
(h) Fees means those direct costs which may be assessed a requester considering the categories established by the FOIA; requesters should submit information to assist the ODNI in determining the proper fee category and the ODNI may draw reasonable inferences from the identity and activities of the requester in making such determinations; the fee categories include:
(1) Commercial use request: A request in which the disclosure sought is primarily in the commercial interest of the requester and which furthers such commercial, trade, income or profit interests;
(2) Educational institution: A preschool, a public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, or an institution of vocational education, that operates a program of scholarly research. To be in this category, a requester must show that the request is authorized by and is made
§ 1700.3 Contact for general information and requests.

For general information on this Part, to inquire about the FOIA program at ODNI, or to file a FOIA request (or expression of interest), please direct communication in writing to the Office of the Director of National Intelligence, Chief FOIA Officer c/o Director, Information Management Office, Washington, DC 20511 by mail or by facsimile at (703) 482-2144. FOIA requests can also be submitted by electronic mail to FOIA@dni.gov. For general information or status information on pending cases only, call the ODNI FOIA Customer Service Center at (571) 204-4774.

§ 1700.4 Preliminary information.

Members of the public shall address all communications to the point of contact specified in §1700.3 and clearly delineate the communication as a request under the FOIA. ODNI staff who receive a FOIA request shall expeditiously forward the request to the Director, Information Management Office (IMO). Requests and appeals (as well as referrals and consultations) received from FOIA requesters who owe outstanding fees for information services at this or other federal agencies will not be accepted and action on all pending requests shall be terminated in such circumstances.

§ 1700.5 Requirements as to form and content.

(a) Required information. No particular form is required. A request must reasonably describe the record or records being sought and be submitted in accordance with this regulation. Documents must be described sufficiently to enable a staff member familiar with the subject to locate the documents with a reasonable amount of effort. Whenever possible, your request should include specific information about each record sought, such as the date, title or name, author, recipient, and the subject matter of the record. As a general rule, the more specific you are about the records or type of records

(k) Potential requester means a person, organization, or other entity who submits an expression of interest.
that you want, the more likely it will be that the IMO will be able to locate records responsive to your request. The IMO will provide you an opportunity to discuss your request with it so that you may modify your request to meet the requirements of this section. If after having been asked to do so you do not provide the IMO with information sufficient to enable it to locate responsive records your request will be closed.

(b) Additional information for fee determination. A requester must provide sufficient personally identifying information to allow staff to determine the appropriate fee category and to contact the requester easily.

§ 1700.6 Fees for records services.

(a) In general. Search, review, and reproduction fees will be charged in accordance with the provisions below relating to schedule, limitations, and category of requester. Applicable fees will be due even if a subsequent search locates no responsive records or some or all of the responsive records must be denied under one or more of the exemptions of the FOIA.

(b) Fee waiver requests. Records will be furnished without charge or at a reduced rate when ODNI determines:

(1) As a matter of administrative discretion, the interest of the United States Government would be served, or

(2) It is in the public interest to provide responsive records because the disclosure is likely to contribute significantly to the public understanding of the operations or activities of the United States Government and is not primarily in the commercial interest of the requester.

(c) Fee waiver appeals. Denials of requests for fee waivers or reductions may be appealed to the Director of the Intelligence Staff, or his functional equivalent, through the ODNI Chief FOIA Officer. A requester is encouraged to provide any explanation or argument as to how his or her request satisfies the requirements of this regulation and the Act. See §1700.14 for further details on appeals.

(d) Time for fee waiver requests and appeals. Appeals should be resolved prior to the initiation of processing and the incurring of costs. However, fee waiver requests will be accepted at any time prior to an agency decision regarding the request, except when processing has been initiated, in which case the requester must agree to be responsible for costs in the event of an adverse administrative or judicial decision.

(e) Agreement to pay fees. If you make a FOIA request, it shall be considered a firm commitment by you to pay all applicable fees chargeable under this regulation, up to and including the amount of $25.00, unless you ask for a waiver of fees. When making a request, you may specify a willingness to pay a greater or lesser amount.

(f) Advance payment. The ODNI may require an advance payment of up to 100 percent of the estimated fees when projected fees exceed $250.00, not including charges associated with the first 100 pages of production and two hours of search (when applicable), or when the requester previously failed to pay fees in a timely fashion, for fees of any amount. ODNI will hold in abeyance for 45 days those requests where advance payment has been requested.

(g) Schedule of fees.—(1) In general.

The schedule of fees for services performed in responding to requests for records is as follows:

<table>
<thead>
<tr>
<th>Personnel Search and Review</th>
<th>Quarter hour</th>
<th>$5.00</th>
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<tbody>
<tr>
<td>Clerical/Technical</td>
<td>Quarter hour</td>
<td>5.00</td>
</tr>
<tr>
<td>Professional/Supervisory</td>
<td>Quarter hour</td>
<td>10.00</td>
</tr>
<tr>
<td>Manager/Senior Professional</td>
<td>Quarter hour</td>
<td>18.00</td>
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<tr>
<th>Computer Search and Production</th>
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<tbody>
<tr>
<td>Search (on-line)</td>
<td>Flat rate</td>
<td>10.00</td>
</tr>
<tr>
<td>Search (off-line)</td>
<td>Flat rate</td>
<td>30.00</td>
</tr>
<tr>
<td>Other activity</td>
<td>Per minute</td>
<td>10.00</td>
</tr>
<tr>
<td>Tapes (mainframe cassette)</td>
<td>Each</td>
<td>9.00</td>
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§ 1700.7  Processing of requests for records.

(a) In general. Requests meeting the requirements of § 1700.3 through § 1700.6 shall be accepted as formal requests and processed under the FOIA and this,

(2) Application of schedule. Personnel search time includes time expended in manual paper records searches, indices searches, review of computer search results for relevance, and personal computer system searches. In any event where the actual cost to ODNI of a particular item is less than the above schedule (e.g., a large production run of a document resulting in a cost less than $5.00 per hundred pages), then the actual lesser cost will be charged.

(3) Other services. For all other types of output, production, or reproduction (e.g., photographs, maps, or published reports), ODNI will charge actual cost or amounts authorized by statute. Determinations of actual cost shall include the commercial cost of the media, the personnel time expended in making the item to be released, and an allocated cost of the equipment used in making the item, or, if the production is effected by a commercial service, then that charge shall be deemed the actual cost for purposes of this regulation.

(h) Limitations on collection of fees—(1) In general. No fees will be charged if the cost of collecting the fee is equal to or greater than the fee itself. That cost includes the administrative costs to ODNI of billing, receiving, recording, and processing the fee for deposit to the Treasury Department and, as of the date of these regulations, is deemed to be $10.00.

(1) Fee categories. There are four categories of FOIA requesters for fee purposes: Commercial use requesters, educational and non-commercial scientific institution requesters, representatives of the news media requesters, and all other requesters. The categories are defined in § 1700.2 and applicable fees will be assessed as follows:

(1) Commercial use requesters: Charges which recover the full direct costs of searching for, reviewing, and duplicating responsive records (if any);

(2) Educational and non-commercial scientific institution requesters, and representatives of the news media requesters: Only charges for reproduction beyond the first 100 pages;

(3) All other requesters: Charges which recover the full direct cost of searching for and reproducing responsive records (if any) beyond the first 100 pages of reproduction and the first two hours of search time which will be furnished without charge.

(i) Associated requests. If it appears a requester or a group of requesters acting in concert have requested portions of an apparently unitary request for the purpose of avoiding the assessment of fees, ODNI may aggregate any such requests and charge accordingly. Requests from multiple requesters will not be aggregated without clear evidence. ODNI will not aggregate multiple unrelated requests.

§ 1700.7 Paper Production

<table>
<thead>
<tr>
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<th>Per unit</th>
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<tbody>
<tr>
<td>Tapes (mainframe cartridge)</td>
<td>Each</td>
</tr>
<tr>
<td>Tapes (mainframe reel)</td>
<td>Each</td>
</tr>
<tr>
<td>Tapes (PC 9mm)</td>
<td>Each</td>
</tr>
<tr>
<td>Diskette (3.5&quot;)</td>
<td>Each</td>
</tr>
<tr>
<td>CD (bulk recorded)</td>
<td>Each</td>
</tr>
<tr>
<td>CD (recordable)</td>
<td>Each</td>
</tr>
<tr>
<td>Telecommunications</td>
<td>Per minute</td>
</tr>
<tr>
<td>Paper (mainframe printer)</td>
<td>Per page</td>
</tr>
<tr>
<td>Paper (PC b&amp;w laser printer)</td>
<td>Per page</td>
</tr>
<tr>
<td>Paper (PC color printer)</td>
<td>Per page</td>
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Photocopy (standard or legal) Per page .10
Microfiche Per frame .20
Pre-printed (if available) Per 100 pages 5.00
Published (if available) Per item NTIS
§ 1700.8 Action on the request.

(a) Initial action for access. ODNI staff identified to search for records pursuant to a FOIA request shall search all relevant record systems within their cognizance as of the date the search is commenced. A staff member tasked to conduct a search shall:

1. Determine whether records exist;
2. Determine whether and to what extent any FOIA exemptions apply;
3. Make recommendations for withholding records or portions of records that originated in the staff member’s organization and for which there is a legal basis for denial or make a recommendation in accordance with §1700.7(c). In making recommendations, ODNI staff shall be guided by the procedures specified in §1700.10 regarding confidential commercial information and §1700.11 regarding third party information; and
4. Forward to the Director, IMO, all records responsive to the request.

(b) Referrals and consultations. ODNI shall decline to confirm or deny the existence of responsive records whenever the fact of their existence or nonexistence is itself classified under Executive Order 12,958 and its amending orders, reveals intelligence sources and methods protected pursuant to 50 U.S.C. 403–1(i)(1), or would be an invasion of the personal privacy of third parties. In such circumstances, ODNI, in its final written response, shall so inform the requester and advise of his or her right to file an administrative appeal.

(c) Release of information. When the Director, IMO (or Appeals Authority) makes a final determination to release records, the records will be forwarded to the requester in an appropriate format promptly upon compliance with any preliminary procedural requirements, including payment of fees. If any portion of a record is withheld initially or upon appeal, the Director, IMO (or Appeals Authority) will provide a written response that shall include, at a minimum:

1. The basis for the withholding, citing the specific statutory exemption or exemptions invoked under the FOIA with respect to each portion withheld,

(d) Time for response. Whenever the statutory time limits for processing a request cannot be met because of “unusual circumstances,” as defined in the FOIA, and the component determines to extend the time limits on that basis, ODNI will inform the requester in writing and advise the requester of the right to narrow the scope of his or her request or agree to an alternative timeframe for processing.

(e) Multitrack processing. ODNI may use two or more processing tracks by distinguishing between simple and more complex requests based on the amount of work and/or time needed to process the request, including through limits based on the number of pages involved. ODNI may provide requesters in its slower track with an opportunity to limit the scope of their requests in order to qualify for faster processing within the specified limits of its faster track.
§ 1700.9 Payment of fees, notification of decision, and right of appeal.

(a) Fees in general. Fees collected under this part do not accrue to ODNI and shall be deposited immediately to the general account of the United States Treasury.

(b) Notification of decision. Upon completion of all required review and the receipt of accrued fees (or promise to pay such fees), ODNI will promptly inform the requester in writing of those records or portions of records that will be released and those that will be denied.

(1) For documents to be released, ODNI will provide paper copies or documents on electronic media, if requested and available;

(2) For documents not released or partially released, ODNI shall explain the reasons for any denial and give notice of a right of administrative appeal. For partial releases, redactions will be made to ensure requesters can see the placement and general length of redactions with the applicable exemption or exemptions clearly with respect to each redaction.

§ 1700.10 Procedures for business information.

(a) In general. Business information obtained by ODNI from a submitter shall not be disclosed pursuant to a FOIA request except in accordance with this section. For purposes of this section, the following definitions apply:

(1) Business information means commercial or financial information in which a legal entity has a recognized property interest;

(2) Confidential commercial information means such business information provided to the United States Government by a submitter which is reasonably believed to contain information exempt from release under Exemption 4 of the FOIA, 5 U.S.C. 552(b)(4), because disclosure could reasonably be expected to cause substantial competitive harm; and

(3) Submitter means any person or entity who provides confidential commercial information to the United States Government; it includes, but is not limited to, corporations, businesses (however organized), State governments, and foreign governments.

(b) Designation of confidential commercial information. A submitter of business information will use good-faith efforts to designate, by appropriate markings, either at the time of submission or at a reasonable time thereafter, any portions of its submission that it considers to be confidential commercial information and hence protected from required disclosure pursuant to Exemption 4 of the FOIA. Such designations shall expire 10 years after the date of the submission unless the submitter requests, and provides justification for, a longer designation period.

(c) Process in event of FOIA request—

(1) Notice to submitters. ODNI shall provide a submitter with prompt written notice of receipt of a FOIA request encompassing business information whenever:

(i) The submitter has in good faith designated the information as confidential commercial information, or

(ii) ODNI staff believe that disclosure of the information could reasonably be expected to cause substantial competitive harm, and

(iii) The information was submitted within the last 10 years unless the submitter requested and provided acceptable justification for a specific notice period of greater duration.

(2) Form of notice. Communication to a submitter of commercial information shall either describe the exact nature of the confidential commercial information at issue or provide copies of the responsive records containing such information.

(3) Response by submitter. (i) Within seven days of the notice described in
paragraph (c)(1), all claims of confidentiality by a submitter must be supported by a detailed statement of any objection to disclosure. Such statement shall:

(A) Affirm that the information has not been disclosed to the public;
(B) Explain why the information is a trade secret or confidential commercial information;
(C) Explain in detail how disclosure of the information will result in substantial competitive harm;
(D) Affirm that the submitter will provide ODNI and the Department of Justice with such litigation support as requested; and
(E) Be certified by an officer authorized to legally bind the submitter.

(ii) It should be noted that information provided by a submitter pursuant to this provision may itself be subject to disclosure under the FOIA.

(4) Decision and notice of intent to disclose. (i) ODNI shall consider carefully a submitter’s objections and specific grounds for nondisclosure prior to its final determination. If the Director, IMO, decides to disclose a document over the objection of a submitter, ODNI shall provide the submitter a written notice that shall include:

(A) A statement of the reasons for which the submitter’s disclosure objections were not sustained;
(B) A description of the information to be disclosed; and
(C) A specified disclosure date that is seven days after the date of the instant notice.

(ii) When notice is given to a submitter under this section, the ODNI shall also notify the requester and, if the ODNI notifies a submitter that it intends to disclose information, then the requester shall be notified also and given the proposed date for disclosure.

(5) Notice of FOIA lawsuit. If a requester initiates legal action seeking to compel disclosure of information asserted to be within the scope of this section, ODNI shall promptly notify the submitter. The submitter, as specified above, shall provide such litigation assistance as required by ODNI and the Department of Justice.

(6) Exceptions to notice requirement. The notice requirements of this section shall not apply if ODNI determines that:

(i) The information should not be disclosed, pursuant to Exemption 4 and/or any other exemption of the FOIA;
(ii) The information has been published lawfully or has been officially made available to the public;
(iii) The disclosure of the information is otherwise required by law or federal regulation; or
(iv) The designation made by the submitter under this section appears frivolous, except that, in such a case, the ODNI will, within a reasonable time prior to the specified disclosure date, give the submitter written notice of any final decision to disclose the information.

§ 1700.11 Procedures for information concerning other persons.

(a) In general. Personal information concerning individuals other than the requester shall not be disclosed under the FOIA if the proposed release would constitute a clearly unwarranted invasion of personal privacy, or, if the information was compiled for law enforcement purposes, it could reasonably be expected to constitute an unwarranted invasion of personal privacy. See 5 U.S.C. 552 (b)(6) and (b)(7)(C). For purposes of this section, the following definitions apply:

(1) Personal information means any information about an individual that is not a matter of public record, or easily discernible to the public, or protected from disclosure because of the implications that arise from Government possession of such information.
(2) Public interest means the public interest in understanding the operations and activities of the United States Government and not simply any matter that might be of general interest to the requester or members of the public.

(b) Determination to be made. In making the required determination under this section and pursuant to Exemptions 6 and 7(C) of the FOIA, ODNI will balance the privacy interests that would be compromised by disclosure against the public interest in release of the requested information.
§ 1700.12 Requests for expedited processing.

(a) In general. All requests will be handled in the order received on a strictly “first-in, first-out” basis. Exceptions to this rule will only be made in accordance with the following procedures.

(b) Procedure. A requester who seeks expedited processing must submit a statement, certified to be true and correct, explaining in detail the basis for requesting expedited processing. Within ten calendar days of its receipt of a request for expedited processing, the IMO shall decide whether to grant it and shall notify the requester of the decision. If a request for expedited processing is granted, the request shall be given priority and shall be processed as soon as practicable.

(c) Determination to be made: Requests and appeals will be taken out of order and given expedited processing treatment whenever it is determined that they involve:

(1) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(2) An urgency to inform the public concerning an actual or alleged Federal Government activity, if made by a person primarily engaged in disseminating information.

§ 1700.13 Right to appeal and appeal procedures.

(a) Right to appeal. Individuals who disagree with a decision not to produce a document or parts of a document, to deny a fee category request, to deny a request for a fee waiver or fee reduction, to deny expedited processing, or a decision regarding a fee estimate or a determination that no records exist, should submit a written request for review to the Chief FOIA Officer c/o Director, Information Management Office, Office of the Director of National Intelligence, Washington, DC 20511. The words “FOIA APPEAL” should be written on the letter and the envelope. The appeal must be signed by the individual or his legal counsel.

(b) Requirements as to time and form. Appeals of adverse decisions must be received within 45 days of the date of the ODNI’s initial decision. Requesters should include a statement of the reasons supporting the request for reversal of the initial decision.

(c) Exceptions. No appeal shall be accepted if the requester has outstanding fees for information services at this or another federal agency. In addition, no appeal shall be accepted if the information in question has been the subject of an administrative review within the previous two years or is the subject of pending litigation in the Federal courts.

§ 1700.14 Action by appeals authority.

(a) The Director of the Intelligence Staff, after consultation with any ODNI component organization involved in the initial decision as well as with the Office of General Counsel, will make a final determination on the appeal. Appeals of denials of requests for expedited processing shall be acted on expeditiously.

(b) The Director, IMO, will ordinarily be the initial deciding official on FOIA requests to the ODNI. However, in the event the Director of the Intelligence Staff makes an initial decision that is later appealed, the Principal Deputy Director for National Intelligence will decide the appeal in accordance with the procedures in this section.
§ 1701.2 Definitions.

For purposes of this subpart, the following terms have the meanings indicated:

Access means making a record available to a subject individual.

Act means the Privacy Act of 1974.

Agency means the ODNI or any of its components.

Component means any directorate, mission manager, or other sub-organization in the ODNI or reporting to the Director, that has been designated or established in the ODNI pursuant to Section 103 of the National Security Act of 1947, as amended, including the National Counterterrorism Center (NCTC), the National Counterproliferation Center (NCPC) and the Office of the National Counterintelligence Executive (ONCIX), or such other offices and officials as may be established by themselves and request an accounting of disclosures of those records by the ODNI. In addition, this subpart details parameters for disclosing personally identifiable information to persons other than the subject of a record.

(b) Scope. The provisions of this subpart apply to all records in systems of records maintained by ODNI directorates, centers, mission managers and other sub-organizations (hereinafter called “components”) that are retrieved by an individual’s name or personal identifier.

(c) Applicability. This subpart governs the following individuals and entities:

(1) All ODNI staff and components must comply with this subpart. The terms “staff” and “component” are defined in §1701.2.

(2) Unless specifically exempted, this subpart also applies to advisory committees and councils within the meaning of the Federal Advisory Committee Act (FACA) which provide advice to: Any official or component of ODNI; or the President, and for which ODNI has been delegated responsibility for providing service.

(d) Relation to Freedom of Information Act. The ODNI shall provide a subject individual under this subpart all records which are otherwise accessible to such individual under the provisions of the Freedom of Information Act, 5 U.S.C. 552.

Subpart A—Protection of Privacy and Access to Individual Records Under the Privacy Act of 1974

§ 1701.1 Purpose, scope, applicability.

(a) Purpose. This subpart establishes the policies and procedures the Office of the Director of National Intelligence (ODNI) will follow in implementing the requirements of the Privacy Act of 1974, 5 U.S.C. 552a, as amended. This subpart sets forth the procedures ODNI must follow in collecting and maintaining personal information from or about individuals, as well as procedures by which individuals may request to access or amend records about themselves.
law or as the Director may establish or designate in the ODNI, for example, the Program Manager, Information Sharing Environment (ISE) and the Inspector General (IG).

Disclosure means making a record about an individual available to or releasing it to another party.

FOIA means the Freedom of Information Act.

Individual, when used in connection with the Privacy Act, means a living person who is a citizen of the United States or an alien lawfully admitted for permanent residence. It does not include sole proprietorships, partnerships, or corporations.

Information means information about an individual and includes, but is not limited to, vital statistics; race, sex, or other physical characteristics; earnings information; professional fees paid to an individual and other financial information; benefit data or claims information; the Social Security number, employer identification number, or other individual identifier; address; phone number; medical information; and information about marital, family or other personal relationships.

Maintain means to establish, collect, use, or disseminate when used in connection with the term record; and, to have control over or responsibility for a system of records, when used in connection with the term system of records.

Notification means communication to an individual whether he is a subject individual.

Office of the Director of National Intelligence means any and all of the components of the ODNI.

Record means any item, collection, or grouping of information about an individual that is maintained by the ODNI including, but not limited to, information such as an individual’s education, financial transactions, medical history, and criminal or employment history that contains the individual’s name, or an identifying number, symbol, or any other identifier assigned to an individual. When used in this subpart, record means only a record that is in a system of records.

Routine use means the disclosure of a record outside ODNI, without the consent of the subject individual, for a purpose which is compatible with the purpose for which the record was collected. It does not include disclosure which the Privacy Act otherwise permits pursuant to subsection (b) of the Act.

Staff means any current or former regular or special employee, detaillee, assignee, employee of a contracting organization, or independent contractor of the ODNI or any of its components.

Subject individual means the person to whom a record pertains (or “record subject”).

System of records means a group of records under ODNI’s control from which information about an individual is retrieved by the name of the individual or by an identifying number, symbol, or other particular assigned to the individual. Single records or groups of records which are not retrieved by a personal identifier are not part of a system of records.

§ 1701.3 Contact for general information and requests.

Privacy Act requests and appeals and inquiries regarding this subpart or about ODNI’s Privacy Act program must be submitted in writing to the Director, Information Management Office (D/IMO), Office of the Director of National Intelligence, Washington, DC 20511 (by mail or by facsimile at 703–482–2144) or to the contact designated in the specific Privacy Act System of Records Notice. Privacy Act requests with the required identification statement and signature pursuant to paragraphs (d) and (e) of §1701.7 of this subpart must be filed in original form.

§ 1701.4 Privacy Act responsibilities/policy.

The ODNI will administer records about individuals consistent with statutory, administrative, and program responsibilities. Subject to exemptions authorized by the Act, ODNI will collect, maintain and disclose records as required and will honor subjects’ rights to view and amend records and to obtain an accounting of disclosures.

§ 1701.5 Collection and maintenance of records.

(a) ODNI will not maintain a record unless:
(1) It is relevant and necessary to accomplish an ODNI function required by statute or Executive Order;
(2) It is acquired to the greatest extent practicable from the subject individual when ODNI may use the record to make any determination about the individual;
(3) The individual providing the record is informed of the authority for providing the record (including whether providing the record is mandatory or voluntary), the principal purpose for maintaining the record, the routine uses for the record, and what effect refusing to provide the record may have;
(4) It is maintained with such accuracy, relevance, timeliness and completeness as is reasonably necessary to ensure fairness to the individual in the determination;
(b) Except as to disclosures made to an agency or made under the FOIA, ODNI will make reasonable efforts prior to disseminating a record about an individual, to ensure that the record is accurate, relevant, timely, and complete;
(c) ODNI will not maintain or develop a system of records that is not the subject of a current or planned public notice;
(d) ODNI will not adopt a routine use of information in a system without notice and invitation to comment published in the Federal Register at least 30 days prior to final adoption of the routine use;
(e) To the extent ODNI participates with a non-Federal agency in matching activities covered by section (8) of the Act, ODNI will publish notice of the matching program in the Federal Register;
(f) ODNI will not maintain a record which describes how an individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by the subject individual, or unless pertinent to and within the scope of an authorized law enforcement activity;
(g) When required by the Act, ODNI will maintain an accounting of all disclosures of records by the ODNI to persons, organizations or agencies;
(h) Each ODNI component shall implement administrative, physical and technical controls to prevent unauthorized access to its systems of records, to prevent unauthorized disclosure of records, and to prevent physical damage to or destruction of records;
(i) ODNI will establish rules and instructions for complying with the requirements of the Privacy Act, including notice of the penalties for non-compliance, applicable to all persons involved in the design, development, operation or maintenance of any system of records.

§ 1701.6 Disclosure of records/policy.

Consistent with 5 U.S.C. 552a(b), ODNI will not disclose any record which is contained in a system of records by any means (written, oral or electronic) without the consent of the subject individual unless disclosure without consent is made for reasons permitted under applicable law, including:
(a) Internal agency use on a need-to-know basis;
(b) Release under the Freedom of Information Act (FOIA) if not subject to protection under the FOIA exemptions;
(c) A specific “routine use” as described in the ODNI’s published compilation of Routine Uses Applicable to More Than One ODNI System of Records or in specific published Privacy Act Systems of Records Notices (available at http://www.dni.gov);
(d) Release to the Bureau of the Census, the National Archives and Records Administration, or the Government Accountability Office, for the performance of those entities’ statutory duties;
(e) Release in non-identifiable form to a recipient who has provided written assurance that the record will be used solely for statistical research or reporting;
(f) Compelling circumstances in which the health or safety of an individual is at risk;
(g) Release pursuant to the order of a court of competent jurisdiction or to a governmental entity for a specifically documented civil or criminal law enforcement activity;
(h) Release to either House of Congress or to any committee, subcommittee or joint committee thereof to the extent of matter within its jurisdiction;
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§ 1701.7

(a) How to request. Unless records are not subject to access (see paragraph (b) of this section), individuals seeking access to records about themselves may submit a request in writing to the D/IMO, as directed in Sec. 1701.3 of this subpart, or to the contact designated in the specific Privacy Act System of Records Notice. To ensure proper routing and tracking, requesters should mark the envelope “Privacy Act Request.”

(b) Records not subject to access. The following records are not subject to review by subject individuals:

(1) Records in ODNI systems of records that ODNI has exempted from access and correction under the Privacy Act, 5 U.S.C. 552a(j) or (k), by notice published in the FEDERAL REGISTER, or where those exemptions require that ODNI can neither confirm nor deny the existence or nonexistence of responsive records (see §1701.10(c)(iii)).

(2) Records in ODNI systems of records that another agency has exempted from access and correction under the Privacy Act, 5 U.S.C. 552a(j) or (k), by notice published in the FEDERAL REGISTER, or where those exemptions require that ODNI can neither confirm nor deny the existence or nonexistence of responsive records (see §1701.10(c)(iii)).

(c) Description of records. Individuals requesting access to records about themselves should, to the extent possible, describe the nature of the records, why and under what circumstances the requester believes ODNI maintains the records, the time period in which they may have been compiled and, ideally, the name or identifying number of each Privacy Act System of Records in which they might be included. The ODNI publishes notices in the FEDERAL REGISTER that describe its systems of records. The FEDERAL REGISTER compiles these notices biennially and makes them available in hard copy at large reference libraries and in electronic form at the Government Printing Office’s World Wide Web site, http://www.gpoaccess.gov.

(d) Verification of identity. A written request for access to records about oneself must include full (legal) name, current address, date and place of birth, and citizenship status. Aliens lawfully admitted for permanent residence must provide their Alien Registration Number and the date that status was acquired. The D/IMO may request additional or clarifying information to ascertain identity. Access requests must be signed and the signature either notarized or submitted under 28 U.S.C. 1746, authorizing statements made under penalty of perjury as a substitute for notarization.

(e) Verification of guardianship or representational relationship. The parent or guardian of a minor, the guardian of an individual under judicial disability, or an attorney retained to represent an individual shall provide, in addition to establishing the identity of the minor or individual represented as required in paragraph (d) of this section, evidence of such representation by submitting a certified copy of the minor’s birth certificate, court order, or representational agreement which establishes the relationship and the requester’s identity.

(f) ODNI will permit access to or provide copies of records to individuals other than the record subject (or the subject’s legal representative) only with the requester’s written authorization.

§ 1701.8 Requests to amend or correct records.

(a) How to request. Unless the record is not subject to amendment or correction (see paragraph (b) of this section), individuals (or guardians or representatives acting on their behalf) may make a written amendment or correction request to the D/IMO, as directed in §1701.3 of this subpart, or to the contact designated in a specific Privacy Act System of Records. Requesters seeking amendment or correction should identify the particular record or portion subject to the request, explain why an amendment or correction is necessary, and provide the desired replacement language. Requesters may submit documentation supporting the
request to amend or correct. Requests for amendment or correction will lapse (but may be re-initiated with a new request) if all necessary information is not submitted within forty-five (45) days of the date of the original request. The identity verification procedures of paragraphs (d) and (e) of §1701.7 of this subpart apply to amendment requests.

(b). (1) Records which are determinations of fact or evidence received (e.g., transcripts of testimony given under oath or written statements made under oath; transcripts of grand jury proceedings, judicial proceedings, or quasi-judicial proceedings, which are the official record of those proceedings; pre-sentence records that originated with the courts) and

(2) Records in ODNI systems of records that ODNI or another agency has exempted from amendment and correction under Privacy Act, 5 U.S.C. 552a(j) or (k) by notice published in the FEDERAL REGISTER.

§ 1701.9 Requests for an accounting of record disclosures.

(a) How to request. Except where accountings of disclosures are not required to be kept (see paragraph (b) of this section), record subjects (or their guardians or representatives) may request an accounting of disclosures that have been made to another person, organization, or agency as permitted by the Privacy Act at 5 U.S.C. 552a(b). This accounting contains the date, nature, and purpose of each disclosure, as well as the name and address of the person, organization, or agency to which the disclosure was made. Requests for accounting should identify each record in question and must be made in writing to the D/IMO, as indicated in §1701.3 of this subpart, or to the contact designated in a specific Privacy Act System of Records.

(b) Accounting not required. The ODNI is not required to provide accounting of disclosure in the following circumstances:

(1) Disclosures for which the Privacy Act does not require accounting, i.e., disclosures to employees within the agency and disclosures made under the FOIA;

(2) Disclosures made to law enforcement agencies for authorized law enforcement activities in response to written requests from the respective head of the law enforcement agency specifying the law enforcement activities for which the disclosures are sought; or

(3) Disclosures from systems of records that have been exempted from accounting requirements under the Privacy Act, 5 U.S.C. 552a(j) or (k), by notice published in the FEDERAL REGISTER.

§ 1701.10 ODNI responsibility for responding to access requests.

(a) Acknowledgement of requests. Upon receipt of a request providing all necessary information, the D/IMO shall acknowledge receipt to the requester and provide an assigned request number for further reference.

(b) Tasking to component. Upon receipt of a proper access request, the D/IMO shall provide a copy of the request to the point of contact (POC) in the ODNI component with which the records sought reside. The POC within the component shall determine whether responsive records exist and, if so, recommend to the D/IMO:

(1) Whether access should be denied in whole or part (and the legal basis for denial under the Privacy Act); or

(2) Whether coordination with or referral to another component or federal agency is appropriate.

(c) Coordination and referrals—(1) Examination of records. If a component POC receiving a request for access determines that an originating agency or other agency that has a substantial interest in the record is best able to process the request (e.g., the record is governed by another agency’s regulation, or another agency originally generated or classified the record), the POC shall forward to the D/IMO all records necessary for coordination with or referral to the other component or agency, as well as specific recommendations with respect to any denials.

(2) Notice of referral. Whenever the D/IMO makes all or any part of the responsibility for responding to a request to another agency, the D/IMO shall notify the requester of the referral.

(3) Effect of certain exemptions. (l) In processing a request, the ODNI shall
decline to confirm or deny the existence or nonexistence of any responsive records whenever the fact of their existence or nonexistence:

(A) May reveal protected intelligence sources and collection methods (50 U.S.C. 403–1(i)); or

(B) Is classified and subject to an exemption appropriately invoked by ODNI or another agency under subsections (j) or (k) of the Privacy Act.

(ii) In such event, the ODNI will inform the requester in writing and advise the requestor of the right to file an administrative appeal of any adverse determination.

(d) Time for response. The D/IMO shall respond to a request for access promptly upon receipt of recommendations from the POC and determinations resulting from any necessary coordination with or referral to another agency. The D/IMO may determine to update a requester on the status of a request that remains outstanding longer than reasonably expected.

(e) ODNI action on requests for access—

(1) Grant of access. Once the D/IMO determines to grant a request for access in whole or in part, the D/IMO shall notify the requester in writing and come to agreement with the requester about how to effect access, whether by on-site review or duplication of the records. If a requester is accompanied by another person, the requester shall be required to authorize in writing any discussion of the records in the presence of the other person.

(2) Denial of access. The D/IMO shall notify the requester in writing when an adverse determination is made denying a request for access in any respect. Adverse determinations, or denials, consist of a determination to withhold any requested record in whole or in part; a determination that a requested record does not exist or cannot be located; a determination that what has been requested is not a record subject to the Privacy Act; or a determination that the existence of a record can neither be confirmed nor denied. The notification letter shall state:

(i) The reason(s) for the denial; and

(ii) The procedure for appeal of the denial under §1701.14 of this subpart.

§ 1701.11 ODNI responsibility for responding to requests for amendment or correction.

(a) Acknowledgement of request. The D/IMO shall acknowledge receipt of a request for amendment or correction of records in writing and provide an assigned request number for further reference.

(b) Tasking of component. Upon receipt of a proper request to amend or correct a record, the D/IMO shall forward the request to the POC in the component maintaining the record. The POC shall promptly evaluate the proposed amendment or correction in light of any supporting justification and recommend that the D/IMO grant or deny the request or, if the request involves a record subject to correction by an originating agency, refer the request to the other agency.

(c) Action on request for amendment or correction. (1) If the POC determines that the request for amendment or correction is justified, in whole or in part, the D/IMO shall promptly:

(i) Make the amendment, in whole or in part, as requested and provide the requester a written description of the amendment or correction made; and

(ii) Provide written notice of the amendment or correction to all persons, organizations or agencies to which the record has been disclosed (if an accounting of the disclosure was made);

(2) Where the D/IMO has referred an amendment request to another agency, the D/IMO, upon confirmation from that agency that the amendment has been effected, shall provide written notice of the amendment or correction to all persons, organizations or agencies to which ODNI previously disclosed the record.

(3) If the POC determines that the requester’s records are accurate, relevant, timely and complete, and that no basis exists for amending or correcting the record, either in whole or in part, the D/IMO shall inform the requester in writing of:

(i) The reason(s) for the denial; and

(ii) The procedure for appeal of the denial under Sec. 1701.15 of this subpart.
§ 1701.12 ODNI responsibility for responding to requests for accounting.

(a) Acknowledgement of request. Upon receipt of a request for accounting, the D/IMO shall acknowledge receipt of the request in writing and provide an assigned request number for further reference.

(b) Tasking of component. Upon receipt of a request for accounting, the D/IMO shall forward the request to the POC in the component maintaining the record. The POC shall work with the component’s information management officer and the systems administrator to generate the requested disclosure history.

(c) Action on request for accounting. The D/IMO will notify the requester when the accounting is available for on-site review or transmission in paper or electronic medium.

(d) Notice of court-ordered disclosures. The D/IMO shall make reasonable efforts to notify an individual whose record is disclosed pursuant to court order. Notice shall be made within a reasonable time after receipt of the order; however, when the order is not a matter of public record, the notice shall be made only after the order becomes public. Notice shall be sent to the individual’s last known address and include a copy of the order and a description of the information disclosed. No notice shall be made regarding records disclosed from a criminal law enforcement system that has been exempted from the notice requirement.

(e) Notice of emergency disclosures. ODNI shall notify an individual whose record it discloses under compelling circumstances affecting health or safety. This notice shall be mailed to the individual’s last known address and shall state the nature of the information disclosed; the person, organization, or agency to which it was disclosed; the date of disclosure; and the compelling circumstances justifying the disclosure. This provision shall not apply in circumstances involving classified records that have been exempted from disclosure pursuant to subsection (j) or (k) of the Privacy Act.

§ 1701.13 Special procedures for medical/psychiatric/psychological records.

Current and former ODNI employees, including current and former employees of ODNI contractors, and unsuccessful applicants for employment may seek access to their medical, psychiatric or psychological testing records by writing to: Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505, and provide identifying information as required by paragraphs (d) and (e) of §1701.7 of this subpart. The Central Intelligence Agency’s Privacy Act Regulations will govern administration of these types of records, including appeals from adverse determinations.

§ 1701.14 Appeals.

(a) Individuals may appeal denials of requests for access, amendment, or accounting by submitting a written request for review to the Director, Information Management Office (D/IMO) at the Office of the Director of National Intelligence, Washington, DC 20511. The words “PRIVACY ACT APPEAL” should be written on the letter and the envelope. The appeal must be signed by the record subject or legal representative. No personal appearance or hearing on appeal will be allowed.

(b) The D/IMO must receive the appeal letter within 45 calendar days of the date the requester received the notice of denial. The postmark is conclusive as to timeliness. Copies of correspondence from ODNI denying the request to access or amend the record should be included with the appeal, if possible. At a minimum, the appeal letter should identify:

(1) The records involved;
(2) The date of the initial request for access to or amendment of the record;
(3) The date of ODNI’s denial of that request; and
(4) A statement of the reasons supporting the request for reversal of the initial decision. The statement should focus on information not previously available or legal arguments demonstrating that the ODNI’s decision is improper.

(c) Following receipt of the appeal, the Director of Intelligence Staff (DIS) shall, in consultation with the Office of
General Counsel, make a final determination in writing on the appeal.

(d) Where ODNI reverses an initial denial, the following procedures apply:

(1) If ODNI reverses an initial denial of access, the procedures in paragraph (e)(1) of §1701.10 of this subpart will apply.

(2) If ODNI reverses its initial denial of a request to amend a record, the POC will ensure that the record is corrected as requested, and the D/IMO will inform the individual of the correction, as well as all persons, organizations and agencies to which ODNI had disclosed the record.

(3) If ODNI reverses its initial denial of a request for accounting, the POC will notify the requester when the accounting is available for on-site review or transmission in paper or electronic medium.

(e) If ODNI upholds its initial denial or reverses in part (i.e., only partially granting the request), ODNI’s notice of final agency action will inform the requester of the following rights:

(1) Judicial review of the denial under 5 U.S.C. 552a(g)(1), as limited by 5 U.S.C. 552a(g)(5).

(2) Opportunity to file a statement of disagreement with the denial, citing the reasons for disagreeing with ODNI’s final determination not to correct or amend a record. The requester’s statement of disagreement should explain why he disputes the accuracy of the record.

(3) Inclusion in one’s record of copies of the statement of disagreement and the final denial, which ODNI will provide to all subsequent recipients of the disputed record, as well as to all previous recipients of the record where an accounting was made of prior disclosures of the record.

§ 1701.15 Fees.

ODNI shall charge fees for duplication of records under the Privacy Act, 5 U.S.C. 552a, in the same way in which it will charge for duplication of records under §1700.7(g), ODNI’s regulation implementing the fee provision of the Freedom of Information Act, 5 U.S.C. 552.
time to time to ensure that these requirements are met.

(3) Unauthorized requests. Criminal penalties may be imposed upon any person who knowingly and willfully requests or obtains any record concerning an individual from the ODNI under false pretenses.

Subpart B—Exemption of Record Systems Under the Privacy Act

§ 1701.20 Exemption policies.

(a) General. The DNI has determined that invoking exemptions under the Privacy Act and continuing exemptions previously asserted by agencies whose records ODNI receives is necessary: to ensure against the release of classified information essential to the national defense or foreign relations; to protect intelligence sources and methods; and to maintain the integrity and effectiveness of intelligence, investigative and law enforcement processes. Accordingly, as authorized by the Privacy Act, 5 U.S.C. 552a, subsections (j) and (k), and in accordance with the rulemaking procedures of the Administrative Procedures Act, 5 U.S.C. 553, the ODNI shall:

(1) Exercise its authority pursuant to subsections (j) and (k) of the Privacy Act to exempt certain ODNI systems of records or portions of systems of records from various provisions of the Privacy Act; and

(2) Continue in effect and assert all exemptions claimed under Privacy Act subsections (j) and (k) by an originating agency from which the ODNI obtains records where the purposes underlying the original exemption remain valid and necessary to protect the contents of the record.

(b) Related policies. (1) The exemptions asserted apply to records only to the extent they meet the criteria of subsections (j) and (k) of the Privacy Act, whether claimed by the ODNI or the originator of the records.

(2) Discretion to supersede exemption: Where complying with a request for access or amendment would not appear to interfere with or adversely affect a counterterrorism or law enforcement interest, and unless prohibited by law, the D/IMO may exercise his discretion to waive the exemption. Discretionary waiver of an exemption with respect to a record will not oblige the ODNI to waive the exemption with respect to any other record in an exempted system of records. As a condition of such discretionary access, ODNI may impose any restrictions (e.g., concerning the location of file reviews) deemed necessary or advisable to protect the security of agency operations, information, personnel, or facilities.

(3) Records in ODNI systems also are subject to protection under 50 U.S.C. 403–1(d), the provision of the National Security Act of 1947 which requires the DNI to protect intelligence sources and methods from unauthorized disclosure.

§ 1701.21 Exemption of National Counterterrorism Center (NCTC) systems of records.

(a) The ODNI exempts the following systems of records from the requirements of subsections (c)(3); (d)(1), (2), (3) and (4); (e)(1); (e)(4)(G), (H), (I); and (f) of the Privacy Act to the extent that information in the system is subject to exemption pursuant subsections (k)(1) and (k)(5) of the Act:

(1) NCTC Human Resources Management System (ODNI/NCTC-001).

(2) [Reserved]

(b) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) (accounting of disclosures) because an accounting of disclosures from records concerning the record subject would specifically reveal an investigative interest on the part of the ODNI or recipient agency and could result in release of properly classified national security or foreign policy information.

(2) From subsections (d)(1), (2), (3) and (4) (record subject’s right to access and amend records) because affording access and amendment rights could alert the record subject to the investigative interest of intelligence or law enforcement agencies or compromise sensitive information classified in the interest of national security. In the absence of a national security basis for exemption, records in this system may be exempted from access and amendment to the extent necessary to honor promises of confidentiality to persons providing information concerning a
candidate for position. Inability to maintain such confidentiality would restrict the free flow of information vital to a determination of a candidate's qualifications and suitability.

(3) From subsection (e)(1) (maintain only relevant and necessary records) because it is not always possible to establish relevance and necessity before all information is considered and evaluated in relation to an intelligence concern. In the absence of a national security basis for exemption under subsection (k)(1), records in this system may be exempted from the relevance requirement pursuant to subsection (k)(5) because it is not possible to determine in advance what exact information may assist in determining the qualifications and suitability of a candidate for position. Seemingly irrelevant details, when combined with other data, can provide a useful composite for determining whether a candidate should be appointed.

(4) From subsections (e)(4)(G) and (H) (publication of procedures for notifying subjects of the existence of records about them and how they may access records and contest contents) because the system is exempted from subsection (d) provisions regarding access and amendment, and from the subsection (f) requirement to promulgate agency rules. Nevertheless, the ODNI has published notice concerning notification of a subject in response to his request if any system of records named by the subject contains a record pertaining to him and procedures by which the subject may access or amend the records. Notwithstanding exemption, the ODNI may determine it appropriate to satisfy a record subject's access request.

(5) From subsection (e)(4)(I) (identifying sources of records in the system of records) because identifying sources could result in disclosure of properly classified national defense or foreign policy information, intelligence sources and methods, and investigatory techniques and procedures. Notwithstanding its proposed exemption from this requirement, ODNI identifies record sources in broad categories sufficient to provide general notice of the origins of the information it maintains in its systems of records.

(6) From subsection (f) (agency rules for notifying subjects to the existence of records about them, for accessing and amending records, and for assessing fees) because the system is exempt from subsection (d) provisions regarding access and amendment of records by record subjects. Nevertheless, the ODNI has published agency rules concerning notification of a subject in response to his request if any system of records named by the subject contains a record pertaining to him and procedures by which the subject may access or amend the records. Notwithstanding exemption, the ODNI may determine it appropriate to satisfy a record subject's access request.

(c) The ODNI exempts the following systems of records from the requirements of subsections (c)(3); (d)(1), (2), (3) and (4); (e)(1); (e)(4)(G), (H), (I); and (f) of the Privacy Act to the extent that information in the system is subject to exemption pursuant to subsection (k)(1) of the Act:

(2) NCTC Telephone Directory (ODNI/NCTC–003).
(3) NCTC Partnership Management Records (ODNI/NCTC–006).
(4) NCTC Tacit Knowledge Management Records (ODNI/NCTC–007).
(d) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) (accounting of disclosures) because an accounting of disclosures from records concerning the record subject would specifically reveal an investigative interest on the part of the ODNI or recipient agency and could result in release of properly classified national security or foreign policy information.

(2) From subsections (d)(1), (2), (3) and (4) (record subject's right to access and amend records) because affording access and amendment rights could alert the record subject to the investigative interest of intelligence or law enforcement agencies or compromise sensitive information classified in the interest of national security.

(3) From subsection (e)(1) (maintain only relevant and necessary records) because it is not always possible to establish relevance and necessity before all information is considered and evaluated in relation to an intelligence concern.
(4) From subsections (e)(4)(G) and (H) (publication of procedures for notifying subjects of the existence of records about them and how they may access records and contest contents) because the system is exempted from subsection (d) provisions regarding access and amendment and from the subsection (f) requirement to promulgate agency rules. Nevertheless, the ODNI has published notice concerning notification, access, and contest procedures because it may in certain circumstances determine it appropriate to provide subjects access to all or a portion of the records about them in a system of records.

(5) From subsection (e)(4)(I) (identifying sources of records in the system of records) because identifying sources could result in disclosure of properly classified national defense or foreign policy information, intelligence sources and methods, and investigatory techniques and procedures. Notwithstanding its proposed exemption from this requirement, ODNI identifies record sources in broad categories sufficient to provide general notice of the origins of the information it maintains in its systems of records.

(6) From subsection (f) (agency rules for notifying subjects to the existence of records about them, for accessing and amending records, and for assessing fees) because the system is exempt from subsection (d) provisions regarding access and amendment of records by record subjects. Nevertheless, the ODNI has published agency rules concerning notification of a subject in response to his request if any system of records named by the subject contains a record pertaining to him and procedures by which the subject may access or amend the records. Notwithstanding exemption, the ODNI may determine it appropriate to satisfy a record subject’s access request.

(e) The ODNI exempts the following systems of records from the requirements of subsections (c)(3); (d)(1), (2), (3), (4); (e)(1); (e)(4)(G), (H), (I); and (f) of the Privacy Act, to the extent that information in the system is subject to exemption pursuant to subsections (k)(1) and (k)(2) of the Act:

1. NCTC Knowledge Repository (SANCTUM) (ODNI/NCTC–004).
2. NCTC Online (ODNI/NCTC–005).
3. NCTC Terrorism Analysis Records (ODNI/NCTC–008).

(f) Exemptions from the particular subsections are justified for the following reasons:

1. From subsection (c)(3) (accounting of disclosures) because an accounting of disclosures from records concerning the record subject would specifically reveal an investigative interest on the part of the ODNI as well as the recipient agency and could: Result in release of properly classified national security or foreign policy information; compromise ongoing efforts to investigate a known or suspected terrorist; reveal sensitive investigative or surveillance techniques; or identify a confidential source. With this information, the record subject could frustrate counterintelligence measures; impede an investigation by destroying evidence or intimidating potential witnesses; endanger the physical safety of sources, witnesses, and law enforcement and intelligence personnel and their families; or evade apprehension or prosecution by law enforcement personnel.

2. From subsections (d)(1), (2), (3) and (4) (record subject’s right to access and amend records) because these provisions concern individual access to and amendment of counterterrorism, investigatory and intelligence records. Affording access and amendment rights could alert the record subject to the fact and nature of an investigation or the investigative interest of intelligence or law enforcement agencies; permit the subject to frustrate such investigation, surveillance or potential prosecution; compromise sensitive information classified in the interest of national security; identify a confidential source or disclose information which would reveal a sensitive investigative or intelligence technique; and endanger the health or safety of law enforcement personnel, confidential informants, and witnesses. In addition, affording subjects access and amendment rights would impose an impossible administrative burden to continuously reexamine investigations, analyses, and reports.
(3) From subsection (e)(1) (maintain only relevant and necessary records) because it is not always possible for intelligence or law enforcement agencies to know in advance what information about an encounter with a known or suspected terrorist will be relevant for the purpose of conducting an operational response. Relevance and necessity are questions of judgment and timing, and only after information is evaluated can relevance and necessity be established. In addition, information in the system of records may relate to matters under the investigative jurisdiction of another agency, and may not readily be segregated. Furthermore, information in these systems of records, over time, aid in establishing patterns of criminal activity that can provide leads for other law enforcement agencies.

(4) From subsections (e)(4)(G) and (H) (publication of procedures for notifying subjects of the existence of records about them and how they may access records and contest contents) because the system is exempted from subsection (d) provisions regarding access and amendment and from the subsection (f) requirement to promulgate agency rules. Nevertheless, the ODNI has published notice concerning notification of a subject in response to his request if any system of records named by the subject contains a record pertaining to him and procedures by which the subject may access or amend the records. Notwithstanding exemption, the ODNI may determine it appropriate to satisfy a record subject’s access request.

§ 1701.22 Exemption of Office of the National Counterintelligence Executive (ONCIX) system of records.

(a) The ODNI exempts the following system of records from the requirements of subsections (c)(3); (d)(1), (2), (3), (4); (e)(1); (e)(4)(G), (H), (I); and (f) of the Privacy Act, to the extent that information in the system is subject to exemption pursuant to subsections (k)(1) and (k)(2) of the Act:

(1) ONCIX Counterintelligence Damage Assessment Records (ODNI/ONCIX–001).

(2) [Reserved]

(b) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) (accounting of disclosures) because an accounting of disclosures from records concerning the record subject would specifically reveal an investigative interest on the part of the ODNI as well as the recipient agency and could: result in release of properly classified national security or foreign policy information; compromise ongoing efforts to investigate a known or suspected terrorist; reveal sensitive investigative or surveillance techniques; or identify a confidential source. With this information, the record subject could frustrate counterintelligence measures; impede an investigation by destroying evidence or intimidating potential witnesses; endanger the physical safety of sources, witnesses, and law enforcement and intelligence personnel and their families; or evade apprehension or prosecution by law enforcement personnel.
(2) From subsections (d)(1), (2), (3) and (4) (record subject’s right to access and amend records) because these provisions concern individual access to and amendment of counterterrorism, investigatory and intelligence records. Affording access and amendment rights could alert the record subject to the fact and nature of an investigation or the investigative interest of intelligence or law enforcement agencies; permit the subject to frustrate such investigation, surveillance or potential prosecution; compromise sensitive information classified in the interest of national security; identify a confidential source or disclose information which would reveal a sensitive investigative or intelligence technique; and endanger the health or safety of law enforcement personnel, confidential informants, and witnesses. In addition, affording subjects access and amendment rights would impose an impossible administrative burden to continuously reexamine investigations, analyses, and reports.

(3) From subsection (e)(1) (maintain only relevant and necessary records) because it is not always possible to know in advance what information will be relevant to evaluate and mitigate damage to the national security. Relevance and necessity are questions of judgment and timing, and only after information is evaluated can relevance and necessity be established. In addition, information in the system of records may relate to matters under the investigative jurisdiction of another agency, and may not readily be segregated. Furthermore, information in these systems of records, over time, aid in establishing patterns of criminal activity that can provide leads for other law enforcement agencies.

(4) From subsections (e)(4)(G) and (H) (publication of procedures for notifying subjects to the existence of records about them and how they may access records and contest contents) because the system is exempted from subsection (d) provisions regarding access and amendment of records and from the subsection (f) requirement to promulgate agency rules. Nevertheless, the ODNI has published notice concerning notification of a subject in response to his request if any system of records named by the subject contains a record pertaining to him and procedures by which the subject may access or amend the records. Notwithstanding exemption, the ODNI may determine it appropriate to satisfy a record subject’s access request.

§ 1701.23 Exemption of Office of Inspector General (OIG) systems of records.

(a) The ODNI exempts the following systems of records from the requirements of subsections (c)(3); (d)(1), (2), (3) and (4); (e)(1); (e)(4)(G), (H), (I); and (f) of the Privacy Act to the extent that information in the system is subject to exemption pursuant subsections (k)(1) and (k)(5) of the Act:

(1) OIG Human Resources Records (ODNI/OIG–001).
(2) OIG Experts Contact Records (ODNI/OIG–002).

(b) Exemptions from the particular subsections are justified for the following reasons:
§ 1701.23  32 CFR Ch. XVII (7–1–09 Edition)

(1) From subsection (c)(3) (accounting of disclosures) because an accounting of disclosures from records concerning the record subject would specifically reveal an investigative interest on the part of the ODNI or recipient agency and could result in release of properly classified national security or foreign policy information.

(2) From subsections (d)(1), (2), (3) and (4) (record subject’s right to access and amend records) because affording access and amendment rights could alert the record subject to the investigative interest of intelligence or law enforcement agencies or compromise sensitive information classified in the interest of national security. In the absence of a national security basis for exemption under subsection (k)(1), records in this system may be exempted from access and amendment pursuant to subsection (k)(5) to the extent necessary to honor promises of confidentiality to persons providing information concerning a candidate for position. Inability to maintain such confidentiality would restrict the free flow of information vital to a determination of a candidate’s qualifications and suitability.

(3) From subsection (e)(1) (maintain only relevant and necessary records) because it is not always possible to establish relevance and necessity before all information is considered and evaluated in relation to an intelligence concern. In the absence of a national security basis for exemption under subsection (k)(1), records in this system may be exempted from the relevance requirement pursuant to subsection (k)(5) because it is not always possible to determine in advance what exact information may assist in determining the qualifications and suitability of a candidate for position. Seemingly irrelevant details, when combined with other data, can provide a useful composite for determining whether a candidate should be appointed.

(4) From subsections (e)(4)(G) and (H) (publication of procedures for notifying subjects of the existence of records about them and how they may access records and contest contents) because the system is exempted from subsection (d) provisions regarding access and amendment and from the subsection (f) requirement to promulgate agency rules. Nevertheless, the ODNI has published such a notice concerning notification, access, and contest procedures because it may in certain circumstances determine it appropriate to provide subjects access to all or a portion of the records about them in a system of records.

(5) From subsection (e)(4)(I) (identifying sources of records in the system of records) because identifying sources could result in disclosure of properly classified national defense or foreign policy information, intelligence sources and methods and investigatory techniques and procedures. Notwithstanding its proposed exemption from this requirement, ODNI identifies record sources in broad categories sufficient to provide general notice of the origins of the information it maintains in its systems of records.

(6) From subsection (f) (agency rules for notifying subjects to the existence of records about them, for accessing and amending records and for assessing fees) because the system is exempt from subsection (d) provisions regarding access and amendment of records by record subjects. Nevertheless, the ODNI has published agency rules concerning notification of a subject in response to his request if any system of records named by the subject contains a record pertaining to him and procedures by which the subject may access or amend the records. Notwithstanding exemption, the ODNI may determine it appropriate to satisfy a record subject’s access request.

(c) The ODNI exempts the following system of records from the requirements of subsections (c)(3) and (4); (d)(1), (2), (3), (4); (e)(1), (2), (3), (5), (8) and (12); and (g) of the Privacy Act, to the extent that information in the system is subject to exemption pursuant to subsection (j)(2) of the Act. In addition, the following system of records is exempted from the requirements of subsections (c)(3); (d)(1), (2), (3) and (4); (e)(1); (e)(4)(G), (H) and (I); and (f) of the Privacy Act, to the extent that information in the system is subject to exemption pursuant to subsections (k)(1) and (k)(2) of the Act.

(1) OIG Investigation and Interview Records (ODNI/OIG–003).
(2) [Reserved]

(d) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) (accounting of disclosures) because an accounting of disclosures from records concerning the record subject would specifically reveal an investigative interest on the part of the ODNI as well as the recipient agency and could result in release of properly classified national security or foreign policy information; compromise ongoing efforts to investigate a known or suspected terrorist; reveal sensitive investigative or surveillance techniques; or identify a confidential source. With this information, the record subject could frustrate counterintelligence measures; impede an investigation by destroying evidence or intimidating potential witnesses; endanger the physical safety of sources, witnesses, and law enforcement and intelligence personnel and their families; or evade apprehension or prosecution by law enforcement personnel.

(2) From subsection (c)(4) (notice of amendment to record recipients) because the system is exempted from the access and amendment provisions of subsection (d).

(3) From subsections (d)(1), (2), (3) and (4) (record subject’s right to access and amend records) because these provisions concern individual access to and amendment of counterterrorism, investigatory and intelligence records. Affording access and amendment rights could alert the record subject to the fact and nature of an investigation or the investigative interest of intelligence or law enforcement agencies; permit the subject to frustrate such investigation, surveillance or potential prosecution; compromise sensitive information classified in the interest of national security; identify a confidential source or disclose information which would reveal a sensitive investigative or intelligence technique; and endanger the health or safety of law enforcement personnel, confidential informants, and witnesses. In addition, affording subjects access and amendment rights would impose an impossible administrative burden to continuously reexamine investigations, analyses, and reports.

(4) From subsection (e)(1) (maintain only relevant and necessary records) because it is not always possible to know in advance what information will be relevant for the purpose of conducting an investigation. Relevance and necessity are questions of judgment and timing, and only after information is evaluated can relevance and necessity be established. In addition, information in the system of records may relate to matters under the investigative jurisdiction of another agency, and may not readily be segregated. Furthermore, information in these systems of records, over time, aid in establishing patterns of criminal activity that can provide leads for other law enforcement agencies.

(5) From subsection (e)(2) (collection directly from the individual) because application of this provision would alert the subject of a counterterrorism investigation, study or analysis to that fact, permitting the subject to frustrate or impede the activity. Counterterrorism investigations necessarily rely on information obtained from third parties rather than information furnished by subjects themselves.

(6) From subsection (e)(3) (provide Privacy Act Statement to subjects furnishing information) because the system is exempted from the (e)(2) requirement to collect information directly from the subject.

(7) From subsections (e)(4)(G) and (H) (publication of procedures for notifying subjects of the existence of records and how they may access records and contest contents) because the system is exempted from subsection (d) provisions regarding access and amendment and from the subsection (f) requirement to promulgate agency rules. Nevertheless, the ODNI has published notice concerning notification, access, and contest procedures because it may in certain circumstances determine it appropriate to provide subjects access to all or a portion of the records about them in a system of records.

(8) From subsection (e)(4)(I) (identifying sources of records in the system of records) because identifying sources could result in disclosure of properly...
§ 1701.30 Policy and applicability.

(a) ODNI proposes the following general routine uses to foster simplicity and economy and to avoid redundancy or error by duplication in multiple ODNI systems of records over which ODNI exercises no control. In addition, in collecting information for counterterrorism, intelligence, and law enforcement purposes, it is not possible to determine in advance what information is accurate, relevant, timely, and complete. With the passage of time and the development of additional facts and circumstances, seemingly irrelevant or dated information may acquire significance. The restrictions imposed by (e)(5) would limit the ability of intelligence analysts to exercise judgment in conducting investigations and impede development of intelligence necessary for effective counterterrorism and law enforcement efforts.

(b) These general routine uses may apply to every Privacy Act system of records maintained by ODNI and its components, unless specifically stated otherwise in the System of Records Notice for a particular system. Additional general routine uses may be identified as notices of systems of records are published.

(c) Routine uses specific to a particular System of Records are identified in the System of Records Notice for that system.

§ 1701.31 General routine uses.

(a) Except as noted on Standard Forms 85 and 86 and supplemental forms thereto (questionnaires for employment in, respectively, “non-sensitive” and “national security” positions within the Federal government), a record that on its face or in conjunction with other information indicates or relates to a violation or potential violation of law, whether civil, criminal, administrative or regulatory in nature, and whether arising by general
(b) A record from a system of records maintained by the ODNI may be disclosed as a routine use, subject to appropriate protections for further disclosure, in the course of presenting information or evidence to a magistrate, special master, administrative law judge, or to the presiding official of an administrative board, panel or other administrative body.

(c) A record from a system of records maintained by the ODNI may be disclosed as a routine use to representatives of the Department of Justice or any other entity responsible for representing the interests of the ODNI in connection with potential or actual civil, criminal, administrative, judicial or legislative proceedings or hearings, for the purpose of representing or providing advice to: The ODNI; any staff of the ODNI in his or her official capacity; any staff of the ODNI in his or her individual capacity where the staff has submitted a request for representation by the United States or for reimbursement of expenses associated with retaining counsel; or the United States or another Federal agency, when the United States or the agency is a party to such proceeding and the record is relevant and necessary to such proceeding.

(d) A record from a system of records maintained by the ODNI may be disclosed as a routine use in a proceeding before a court or adjudicative body when any of the following is a party to litigation or has an interest in such litigation, and the ODNI, Office of General Counsel, determines that use of such records is relevant and necessary to the litigation: The ODNI; any staff of the ODNI in his or her official capacity; any staff of the ODNI in his or her individual capacity where the Department of Justice has agreed to represent the staff or has agreed to provide counsel at government expense; or the United States or another Federal agency, where the ODNI, Office of General Counsel, determines that litigation is likely to affect the ODNI.

(e) A record from a system of records maintained by the ODNI may be disclosed as a routine use to representatives of the Department of Justice and other U.S. Government entities, to the extent necessary to obtain advice on any matter within the official responsibilities of such representatives and the responsibilities of the ODNI.

(f) A record from a system of records maintained by the ODNI may be disclosed as a routine use to a Federal, state or local agency or other appropriate entities or individuals from which whom information may be sought relevant to: A decision concerning the hiring or retention of an employee or other personnel action; the issuing or retention of a security clearance or special access, contract, grant, license, or other benefit; or the conduct of an authorized investigation or inquiry, to the extent necessary to identify the individual, inform the source of the nature and purpose of the inquiry, and identify the type of information requested.

(g) A record from a system of records maintained by the ODNI may be disclosed as a routine use to any Federal, state, local, tribal or other public authority, or to a legitimate agency of a foreign government or international authority to the extent the record is relevant and necessary to the other entity’s decision regarding the hiring or retention of an employee or other personnel action; the issuing or retention of a security clearance or special access, contract, grant, license, or other benefit; or the conduct of an authorized inquiry or investigation.

(h) A record from a system of records maintained by the ODNI may be disclosed as a routine use to a Member of Congress or Congressional staffer in response to an inquiry from that Member of Congress or Congressional staffer made at the written request of the individual who is the subject of the record.

(i) A record from a system of records maintained by the ODNI may be disclosed to the Office of Management and
Budget in connection with the review of private relief legislation, as set forth in Office of Management and Budget Circular No. A–19, at any stage of the legislative coordination and clearance process as set forth in the Circular.

(j) A record from a system of records maintained by the ODNI may be disclosed as a routine use to any agency, organization, or individual for authorized audit operations, and for meeting related reporting requirements, including disclosure to the National Archives and Records Administration for records management inspections and such other purposes conducted under the authority of 44 U.S.C. 2904 and 2906, or successor provisions.

(k) A record from a system of records maintained by the ODNI may be disclosed as a routine use to individual members or staff of Congressional intelligence oversight committees in connection with the exercise of the committees’ oversight and legislative functions.

(l) A record from a system of records maintained by the ODNI may be disclosed as a routine use pursuant to Executive Order to the President’s Foreign Intelligence Advisory Board, the President’s Intelligence Oversight Board, to any successor organizations, and to any intelligence oversight entity established by the President, when the Office of the General Counsel or the Office of the Inspector General determines that disclosure will assist such entities in performing their oversight functions and that such disclosure is otherwise lawful.

(m) A record from a system of records maintained by the ODNI may be disclosed as a routine use to contractors, grantees, experts, consultants, or others when access to the record is necessary to perform the function or service for which they have been engaged by the ODNI.

(n) A record from a system of records maintained by the ODNI may be disclosed as a routine use to a former staff of the ODNI for the purposes of responding to an official inquiry by a Federal, state, local, tribal, territorial, foreign, or multinational agency or entity or to any other appropriate entity or individual for any of the following purposes: to provide notification of a serious terrorist threat for the purpose of guarding against or responding to such...
Office of the Director of National Intelligence

§ 1702.3

threat; to assist in coordination of terrorist threat awareness, assessment, analysis, or response; or to assist the recipient in performing authorized responsibilities relating to terrorism or counterterrorism.

(s) A record from a system of records maintained by the ODNI may be disclosed as a routine use for the purpose of conducting or supporting authorized counterintelligence activities as defined by section 401a(3) of the National Security Act of 1947, as amended, to elements of the Intelligence Community, as defined by section 401a(4) of the National Security Act of 1947, as amended; to the head of any Federal agency or department; to selected counterintelligence officers within the Federal government.

(t) A record from a system of records maintained by the ODNI may be disclosed as a routine use to a Federal, state, local, tribal, territorial, foreign, or multinational government agency or entity, or to other authorized entities or individuals, but only if such disclosure is undertaken in furtherance of responsibilities conferred by, and in a manner consistent with, the National Security Act of 1947, as amended; the Counterintelligence Enhancement Act of 2002, as amended; Executive Order 12333 or any successor order together with its implementing procedures approved by the Attorney General; and other provisions of law, Executive Order or directive relating to national intelligence or otherwise applicable to the ODNI. This routine use is not intended to supplant the other routine uses published by the ODNI.

PART 1702—PROCEDURES GOVERNING THE ACCEPTANCE OF SERVICE OF PROCESS

Sec.
1702.1 Scope and purpose.
1702.2 Definitions.
1702.3 Procedures governing acceptance of service of process.
1702.4 Notification to Office of General Counsel.
1702.5 Interpretation.


SOURCE: 74 FR 11479, Mar. 18, 2009, unless otherwise noted.

§ 1702.1 Scope and purpose.

This part sets forth the ODNI policy concerning service of process upon the ODNI and ODNI employees in their official, individual or combined official and individual capacities. This part is intended to ensure the orderly execution of ODNI affairs and is not intended to impede the legal process.

§ 1702.2 Definitions.

For purposes of this part the following terms have the following meanings:

DNI. The Director of National Intelligence.

General Counsel. The ODNI’s General Counsel, Acting General Counsel or Deputy General Counsel.

ODNI. The Office of the Director of National Intelligence and all of its components, including, but not limited to, the National Counterintelligence Executive, the National Counterterrorism Center, the National Counterproliferation Center, the Program Manager for the Information Sharing Environment, and all national intelligence centers and program managers the DNI may establish.

ODNI Employee. Any current or former employee, contractor, independent contractor, assignee or detailee to the ODNI.

OGC. The Office of the General Counsel of the ODNI.

Process. A summons, complaint, subpoena or other document properly issued by or under the authority of a federal, state, local or other government entity of competent jurisdiction.

§ 1702.3 Procedures governing acceptance of service of process.

(a) Service of process upon the ODNI or an ODNI employee in the employee’s official capacity.

(1) Personal service. Unless otherwise expressly authorized by the General Counsel, personal service of process upon the ODNI or an ODNI employee in the employee’s official capacity, may be accepted only by an OGC attorney
at ODNI Headquarters. The OGC attorney shall write or stamp “Service Accepted In Official Capacity Only” on the return of service form.

(2) Mail service. Where service of process by registered or certified mail is authorized by law, only an OGC attorney may accept such service of process upon the ODNI or an ODNI employee in the employee’s official capacity, unless otherwise expressly authorized by the General Counsel. The OGC attorney shall write or stamp, “Service Accepted In Official Capacity Only,” on the waiver of personal service form. Service of process by mail must be addressed to the Office of the Director of National Intelligence, Office of General Counsel, Washington, DC 20511, and the envelope must be conspicuously marked “Service of Process.”

(b) Service of process upon an ODNI employee solely in the employee’s individual capacity.

(1) Generally. ODNI employees will not be required to accept service of process in their purely individual capacity on ODNI facilities or premises.

(2) Personal Service. Subject to the sole discretion of the General Counsel, process servers generally will not be allowed to enter ODNI facilities or premises for the purpose of serving process upon an ODNI employee solely in the employee’s individual capacity. Except for the DNI, the Principal Deputy Director of National Intelligence, and the Director of the Intelligence Staff, the OGC is not authorized to accept service of process on behalf of any ODNI employee in the employee’s individual capacity.

(3) Mail Service. Unless otherwise expressly authorized by the General Counsel, ODNI employees are not authorized to accept or forward mailed service of process directed to another ODNI employee in that employee’s individual capacity. Any such process will be returned to the sender via appropriate postal channels.

(c) Service of Process Upon an ODNI employee in a combined official and individual capacity. Unless otherwise expressly authorized by the General Counsel, service of process, in person or by mail, upon an ODNI employee in the employee’s combined official and individual capacity, may be accepted only for the ODNI employee in the employee’s official capacity by an OGC attorney at ODNI Headquarters. The OGC attorney shall write or stamp, “Service Accepted In Official Capacity Only,” on the return of service form.

(d) Acceptance of service of process shall not constitute an admission or waiver with respect to jurisdiction, propriety of service, improper venue or any other defense in law or equity available under the laws or rules applicable to the service of process.

§ 1702.4 Notification to Office of General Counsel.

An ODNI employee who receives or has reason to expect to receive, service of process in an official, individual or combined individual and official capacity in a matter that may involve testimony or the furnishing of documents that could reasonably be expected to involve ODNI interests, shall promptly notify the OGC ((703) 275–2527) prior to responding to the service in any manner, and if possible, before accepting service.

§ 1702.5 Interpretation.

Any questions concerning interpretation of this regulation shall be referred to the Office of General Counsel for resolution.

PART 1703—PRODUCTION OF ODNI INFORMATION OR MATERIAL IN PROCEEDINGS BEFORE FEDERAL, STATE, LOCAL OR OTHER GOVERNMENT ENTITY OF COMPETENT JURISDICTION

Sec.
1703.1 Scope and purpose.
1703.2 Definitions.
1703.3 General.
1703.4 Procedure for production.
1703.5 Interpretation.


SOURCE: 74 FR 11480, Mar. 18, 2009, unless otherwise noted.
Office of the Director of National Intelligence § 1703.4

§ 1703.1 Scope and purpose.

This part sets forth the policy and procedures with respect to the production or disclosure of material contained in the files of the ODNI, information relating to or based upon material contained in the files of the ODNI, and information acquired by any person while such person was an employee of the ODNI as part of the performance of that person’s official duties or because of that person’s association with the ODNI.

§ 1703.2 Definitions.

The following definitions apply to this part:

Defenses: Any and all legal defenses, privileges or objections available to the ODNI in response to a demand.

Demand:

(1) Any subpoena, order or other legal summons issued by a federal, state, local or other government entity of competent jurisdiction with the authority to require a response on a particular matter or a request for appearance of an individual where a demand could issue.

(2) Any request for production or disclosure which may result in the issuance of a subpoena, order, or other legal process to compel production or disclosure.

DNI: The Director of National Intelligence.

General Counsel: The ODNI’s General Counsel, Acting General Counsel or Deputy General Counsel.

ODNI: The Office of the Director of National Intelligence and all of its components, including, but not limited to, the Office of the National Counterintelligence Executive, the National Counterterrorism Center, the National Counterproliferation Center, the Program Manager for the Information Sharing Environment, and all national intelligence centers and program managers the DNI may establish.

ODNI Employee: Any current or former employee, contractor, independent contractor, assignee or detailee to the ODNI.

ODNI Information or Material: Information or material that is contained in ODNI files, related to or based upon material contained in ODNI files or acquired by any ODNI employee as part of that employee’s official duties or because of that employee’s association with the ODNI.

OGC: The Office of the General Counsel of the ODNI.

OGC Attorney: Any attorney in the OGC.

Proceeding: Any matter before a court of law, administrative law judge, administrative tribunal or commission or other body that conducts legal or administrative proceedings, and includes all phases of the proceeding.

Production or Produce: The disclosure of ODNI information or material in response to a demand.

§ 1703.3 General.

(a) No ODNI employee shall respond to a demand for ODNI information or material without prior authorization as set forth in this part.

(b) This part is intended only to provide procedures for responding to demands for production of documents or information, and does not create any right or benefit, substantive or procedural, enforceable by any party against the United States.

§ 1703.4 Procedure for production.

(a) Whenever a demand is made for ODNI information or material, the employee who received the demand shall immediately notify OGC (703) 275–2527. The OGC and the ODNI employee shall then follow the procedures set forth in this section.

(b) The OGC may assert any and all defenses before any search for potentially responsive ODNI information or material begins. Further, in its sole discretion the ODNI may decline to begin a search for potentially responsive ODNI information or material until a final and non-appealable disposition of any or all of the asserted defenses is made by the federal, state, local or government entity of competent jurisdiction. When the OGC determines that it is appropriate to search for potentially responsive ODNI information and material, the OGC will forward the demand to the appropriate ODNI offices or entities with responsibility for the ODNI information or material sought in the demand. Those ODNI offices or entities shall then search for and provide to the OGC all
potentially responsive ODNI information and material. The OGC may then assert any and all defenses to the production of what it determines is responsive ODNI information or material.

(c) In reaching a decision on whether to produce responsive ODNI information or material, or to object to the demand, the OGC shall consider whether:

(1) Any relevant privileges are applicable;

(2) The applicable rules of discovery or procedure require production;

(3) Production would violate a statute, regulation, executive order or other provision of law;

(4) Production would violate a nondisclosure agreement;

(5) Production would be inconsistent with the DNI’s responsibility to protect intelligence sources and methods, or reveal classified information or state secrets;

(6) Production would violate a specific ODNI policy issuance or instruction; and

(7) Production would unduly interfere with the orderly conduct of ODNI functions.

(d) If oral or written testimony is sought by a demand in a case or matter in which the ODNI is not a party, a reasonably detailed description of the testimony sought in the form of an affidavit, or a written statement if that is not feasible, by the party seeking the testimony or its attorney must be furnished to the OGC.

(e) The OGC shall notify the appropriate employees of all decisions regarding responses to demands and provide advice and counsel for the implementation of the decisions.

(f) If response to a demand is required before a decision is made whether to provide responsive ODNI information or material, an OGC attorney will request that a Department of Justice attorney appear with the ODNI employee upon whom that demand has been made before the court or other competent authority and provide it with a copy of this regulation and inform the court or other authority as to the status of the demand. The court will be requested to stay the demand pending resolution by the ODNI. If the request for a stay is denied or there is a ruling that the demand must be complied with irrespective of instructions rendered in accordance with this Part, the employee upon whom the demand was made shall, if directed to do so by the General Counsel or its designee, respectfully decline to comply with the demand under the authority of United States ex rel. Touhy v. Ragen, 340 U.S. 462 (1951), and this regulation.

(g) ODNI officials may delegate in writing any authority given to them in this Part to subordinate officials.

(h) Any individual or entity not an ODNI employee as defined in this Part who receives a demand for the production or disclosure of ODNI information or material acquired because of that person’s or entity’s association with the ODNI should notify the OGC ((703) 275–2527) for guidance and assistance. In such cases the provisions of this regulation shall be applicable.

§ 1703.5 Interpretation.

Any questions concerning interpretation of this Regulation shall be referred to the OGC for resolution.
CHAPTER XVIII—NATIONAL COUNTERINTELLIGENCE CENTER

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