

Department of the Navy, DoD

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attorneys representing the interests of the United States.

(2) When an investigation is prepared by or at the direction of an attorney representing the Department of the Navy and is prepared in reasonable anticipation of litigation, it is exempt from mandatory disclosure under the Freedom of Information Act exemption (b)(5) and is normally privileged from discovery in litigation under the attorney work product privilege. 5 U.S.C. 552(b)(5). Unless an attorney prepares the report or personally directs its preparation, the investigation may not be privileged, even if it was prepared in reasonable anticipation of litigation.

(f) *Advance copy.* An advance copy of an investigation conducted because a claim has been, or is likely to be, submitted shall be forwarded to the Tort Claims Unit Norfolk.

[57 FR 4722, Feb. 7, 1992, as amended at 72 FR 53418, Sept. 19, 2007]

§ 750.3 Investigations: The report.

(a) *Purpose.* The purpose of investigations into claims incidents is to gather all relevant information about the incident so adjudicating officers can either pay or deny the claim. The essential task of the investigating officer is to answer the questions of who, what, where, when, why and how? The Navy's best interests are served when the investigation is thorough and is performed in a timely manner so the claimant can be advised promptly of the action on the claim.

(b) *Duties of the investigating officer.* It is the investigating officer's responsibility:

(1) To interview all witnesses to the incident and prepare summaries of their comments. Obtaining signed statements of Government witnesses is not necessary. Summaries of the witnesses' remarks prepared by the investigating officer are quite sufficient and generally expedite the gathering of information. On the other hand, written signed statements should be obtained from the claimant, wherever possible;

(2) To inspect the property alleged to have been damaged by the action of Government personnel;

(3) To determine the nature, extent, and amount of any damage, and to obtain pertinent repair bills or estimates

and medical, hospital, and associated bills necessary to permit an evaluation of the claimant's loss;

(4) To obtain maintenance records of the Navy motor vehicle, plane, or other piece of equipment involved in the claim;

(5) To reduce to writing and incorporate into an appropriate investigative report all pertinent statements, summaries, exhibits, and other evidence considered by the investigator in arriving at his conclusions; and,

(6) To furnish claim forms to any person expressing an interest in filing a claim and to refer such personnel to the Office of the Judge Advocate General, Tort Claims Unit Norfolk, 9620 Maryland Avenue, Suite 100, Norfolk, Virginia 23511-2989.

(c) *Content of the report.* The written report of investigation shall contain information answering the questions mentioned in § 750.3(a) and, depending on the nature of the incident, will include the following:

(1) Date, time, and exact place the accident or incident occurred, specifying the highway, street, or road;

(2) A concise but complete statement of the incident with reference to physical facts observed and any statements by the personnel involved;

(3) Names, grades, organizations, and addresses of military personnel and civilian witnesses;

(4) Opinions as to whether military or civilian employees involved in the incident were acting within the scope of their duties at the time;

(5) Description of the Government property involved in the incident and the nature of any damage it sustained; and,

(6) Descriptions of all private property involved.

(d) *Immediate report of certain events.* The Navy or Marine Corps activity most directly involved in the incident shall notify the Judge Advocate General immediately by message, electronic mail, or telephone in any of the following circumstances:

(1) Claims or possible claims arising out of a major disaster or out of an incident giving rise to five or more possible death or serious injury claims.

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(2) Upon filing of a claim that could result in litigation that would involve a new precedent or point of law.

(3) Claims or possible claims that involve or are likely to involve an agency other than the Department of the Navy.

(e) *Request for assistance.* When an incident occurs at a place where the naval service does not have an installation or a unit conveniently located for conducting an investigation, the commanding officer or officer in charge with responsibility for performing the investigation may request assistance from the commanding officer or officer in charge of any other organization of the Department of Defense. Likewise, if a commanding officer or officer in charge of any other organization of the Department of Defense requests such assistance from a naval commanding officer or officer in charge, the latter should normally comply. If a complete investigation is requested it will be performed in compliance with the regulations of the requested service. These investigations are normally conducted without reimbursement for per diem, mileage, or other expenses incurred by the investigating unit or installation.

(f) *Report of Motor Vehicle Accident, Standard Form 91. RCS OPNAV 5100-6.* The operator of any Government motor vehicle involved in an accident of any sort shall be responsible for making an immediate report on the Operator's Report of Motor Vehicle Accident, Standard Form 91. This operator's report shall be made even though the operator of the other vehicle, or any other person involved, states that no claim will be filed, or the only vehicles involved are Government owned. An accident shall be reported by the operator regardless of who was injured, what property was damaged, or who was responsible. The operator's report shall be referred to the investigating officer, who shall be responsible for examining it for completeness and accuracy and who shall file it for future reference or for attachment to any subsequent investigative report of the accident.

(g) *Priority of the investigation.* To ensure prompt investigation of every incident while witnesses are available and before damage has been repaired, the duties of an investigating officer

shall ordinarily have priority over any other assignments he may have.

(h) *Contents of the report of investigation.* The report should include the following items in addition to the requirements in § 750.3(c):

(1) If pertinent to the investigation, the investigating officer should obtain a statement from claimant's employer showing claimant's occupation, wage or salary, and time lost from work as a result of the incident. In case of personal injury, the investigating officer should ask claimant to submit a written statement from the attending physician setting forth the nature and extent of injury and treatment, the duration and extent of any disability, the prognosis, and the period of hospitalization or incapacity.

(2) A Privacy Act statement for each person who was asked to furnish personal information shall be provided. Social Security numbers of military personnel and civilian employees of the U.S. Government should be included in the report but should be obtained from available records, not from the individual.

(3) Names, addresses, and ages of all civilians or military personnel injured or killed; names of insurance companies; information on the nature and extent of injuries, degree of permanent disability, prognosis, period of hospitalization, name and address of attending physician and hospital, and amount of medical, hospital, and burial expenses actually incurred; occupation and wage or salary of civilians injured or killed; and names, addresses, ages, relationship, and extent of dependency of survivors of any such person fatally injured should be included.

(4) If straying animals are involved, a statement as to whether the jurisdiction has an "open range law" and, if so, reference to such statute.

(5) A statement as to whether any person involved violated any State or Federal statute, local ordinance, or installation regulation and, if so, in what respect. The statute, ordinance, or regulation should be set out in full.

(6) A statement on whether a police investigation was made. A copy of the police report of investigation should be included if available.

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(7) A statement on whether arrests were made or charges preferred, and the result of any trial or hearing in civil or military courts.

(i) *Expert opinions.* In appropriate cases the opinion of an expert may be required to evaluate the extent of damage to a potential claimant's property. In such cases the investigating officer should consult Navy-employed experts, experts employed by other departments of the U.S. Government, or civilian experts to obtain a competent assessment of claimant's damages or otherwise to protect the Government's interest. Any cost involved with obtaining the opinion of an expert not employed by the Navy shall be borne by the command conducting the investigation. Any cost involved in obtaining the opinion of a Navy-employed expert shall be borne by the command to which the expert is attached. Medical experts shall be employed only after consultation with the Chief, Bureau of Medicine and Surgery.

(j) *Action by command initiating the investigation and subsequent reviewing authorities.* (1) The command initiating the investigation in accordance with § 750.3 or § 750.5 shall review the report of investigation. If additional investigation is required or omissions or other deficiencies are noted, the investigation should be promptly returned with an endorsement indicating that a supplemental investigative report will be submitted. If the original or supplemental report is in order, it shall be forwarded by endorsement, with any pertinent comments and recommendations. An advance copy of the investigation shall be forwarded to the Tort Claims Unit Norfolk.

(2) A reviewing authority may direct that additional investigation be conducted, if considered necessary. The initial investigation should not be returned for such additional investigation, but should be forwarded by an endorsement indicating that the supplemental material will be submitted. The report shall be endorsed and forwarded to the next-level authority with appropriate recommendations including an assessment of the responsibility for the incident and a recommendation as to the disposition of any claim that may subsequently be filed. If a reviewing authority may be an adjudicating au-

thority for a claim subsequently filed, one copy of the report shall be retained by such authority for at least 2 years after the incident.

(3) It is essential that each investigative report reflect that a good faith effort was made to comply with the Privacy Act of 1974 (5 U.S.C. 552a) as implemented by 32 CFR 701, subpart F. Any indication of noncompliance shall be explained either in the preliminary statement of the forwarding endorsements and, when required, corrected.

[57 FR 4722, Feb. 7, 1992, as amended at 72 FR 53418, Sept. 19, 2007]

§ 750.4 Claims: In general.

(a) *Claims against the United States.* Claims against the United States shall receive prompt and professional disposition. Every effort will be made to ensure an investigation is thoroughly and accurately completed, the claimant's allegations evaluated promptly, and where liability is established, a check issued as quickly as possible to prevent further harm to a meritorious claimant. Similarly, claims not payable will be processed promptly and the claimant advised of the reasons for the denial.

(b) *Claims in favor of the United States.* Potential claims in favor of the United States will be critically evaluated and, where appropriate, promptly asserted and aggressively pursued.

(c) *Assistance to claimants.* Claimants or potential claimants who inquire about their rights or the procedures to be followed in the resolution of their claims should be referred to the Tort Claims Unit Norfolk. The Tort Claims Unit Norfolk will provide claims forms, advise where the forms should be filed, and inform the requester of the type of substantiating information required. Claims officers may provide advice on the claims process but shall not provide advice or opinions about the merits or the wisdom of filing a particular claim. While claims officers have a responsibility to provide general information about claims, they must consider 18 U.S.C. 205, which makes it a crime for an officer or employee of the United States to act as an agent or an