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§ 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.