

§ 1263.105

§ 1263.105 Considerations in determining whether production or disclosure should be made.

The General Counsel or designate shall direct employees to honor all valid demands. In deciding whether a particular demand is valid, the General Counsel or designate may consider:

(a) Whether such disclosure or appearance is appropriate under the rules of procedure governing the legal proceeding in which the demand arose.

(b) Whether disclosure is appropriate under the relevant substantive law concerning privilege.

(c) Whether disclosure might improperly reveal trade secrets, or commercial or financial information that is confidential or privileged.

(d) Whether disclosure might reveal classified information.

(e) Whether disclosure would violate a specific applicable constitutional provision, federal statute or regulation, or executive order.

(f) Whether appearance of the requested employee would seriously implicate an interest of the Agency such as conservation of employee time for conducting official business, avoidance of expending appropriated monies for non-federal purposes, or avoidance of involving the agency in controversial issues not related to its mission.

§ 1263.106 Final decision of the General Counsel as to production, disclosure, or appearance.

After consideration of the factors enumerated in § 1263.105 (a) through (f), the General Counsel or designate may authorize the testimony, disclosure, or production as demanded; limit the subject matter or extent of any testimony, disclosure, or production through written instruction to the employee; or deny permission for any testimony, disclosure, or production. Where appropriate, the General Counsel or designate may seek withdrawal of the demand by the authorizing party. Any decision of the General Counsel or designate shall be final and shall be communicated to the employee and the party causing the demand to be issued.

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§ 1263.107 Procedure to be followed when response to a demand is required before the General Counsel or designate has reached a final decision.

If a response to a demand is required before the General Counsel or designate can render a decision, the employee subpoenaed, or an agency attorney or other government attorney designated for that purpose, shall appear on behalf of the employee and shall furnish the authority which issued the demand a copy of these regulations, and inform the authority that the demand has been referred for the prompt consideration of the General Counsel, and shall respectfully request the authority to stay the demand until the General Counsel or designate has rendered a final decision.

§ 1263.108 Procedure in the event of an adverse ruling.

If the court or other authority which caused the demand to be issued declines to stay the effect of the demand pending a final decision by the General Counsel or designate; or if the General Counsel or designate directs that the employee may not comply with the demand, and a court or other authority rules that the demand must be complied with irrespective of that decision, the employee upon whom the demand has been made, or an agency or other governmental attorney, shall respectfully decline to comply with the demand and shall cite, “United States ex rel. Touhy v. Ragen, et al., 340 U.S. 462 (1951).”

§ 1263.109 Considerations in determining whether these procedures should be waived.

The General Counsel or designate may grant permission to deviate from the policy or procedure established in these regulations. Permission to deviate will be granted when the deviation will not interfere with matters of operational necessity and when:

(a) It is necessary to prevent a miscarriage of justice; or

(b) The deviation is in the best interests of NASA or the United States.