

Department of the Navy, DoD

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from foreign governments and/or their officials.

§ 701.11 Processing specific kinds of records.

DON activities that possess copies or receive requests for the following kinds of records shall promptly forward the requests to the officials named in this section and if appropriate apprise the requester of the referral:

(a) *Classified records.* Executive Order 12958 governs the classification of records.

(1) Glomar response. In the instance where a DON activity receives a request for records whose existence or nonexistence is itself classifiable, the DON activity shall refuse to confirm or deny the existence or non-existence of the records. This response is only effective as long as it is given consistently. If it were to be known that an agency gave a "Glomar" response only when records do exist and gave a "no records" response otherwise, then the purpose of this approach would be defeated. A Glomar response is a denial and exemption (b)(1) is cited and appeal rights are provided to the requester.

(2) Processing classified documents originated by another activity. DON activities shall refer the request and copies of the classified documents to the originating activity for processing. If the originating activity simply compiled the classified portions of the document from other sources, it shall refer, as necessary, those portions to the original classifying authority for their review and release determination and apprise that authority of any recommendations they have regarding release. If the classification authority for the information cannot be determined, then the originator of the compiled document has the responsibility for making the final determination. Records shall be identified consistent with security requirements. Only after consultation and approval from the originating activity, shall the requester be apprised of the referral. In most cases, the originating activity will make a determination and respond directly to the requester. In those instances where the originating activity determines a Glomar response is appro-

priate, the referring agency shall deny the request.

(b) *Courts-martial records of trial.* The release/denial authority for these records is the Office of the Judge Advocate General (Code 20), Washington Navy Yard, Building 111, Washington, DC 20374-1111. Promptly refer the request and/or documents to this activity and apprise the requester of the referral.

(c) *Foreign requests/information.* (1) FOIA requests received from foreign governments/foreign government officials should be processed as follows:

(i) When a DON activity receives a FOIA request for a record in which an affected DoD/DON activity has a substantial interest in the subject matter, or the DON activity receives a FOIA request from a foreign government, a foreign citizen, or an individual or entity with a foreign address, the DON activity receiving the request shall provide a copy of the request to the affected DON activity.

(ii) Upon receiving the request, the affected activity shall review the request for host nation relations, coordinate with Department of State as appropriate, and if necessary, provide a copy of the request to the appropriate foreign disclosure office for review. Upon request by the affected activity, the DON activity receiving the initial request shall provide a copy of releasable records to the affected activity. The affected activity may further release the records to its host nation after coordination with Department of State if release is in the best interest of the United States Government. If the record is released to the host nation government, the affected DON activity shall notify the DON activity which initially received the request of the release to the host nation.

(iii) Such processing must be done expeditiously so as not to impede the processing of the FOIA request by the DON activity that initially received the request.

(2) Non-U.S. Government Records (*i.e.*, records originated by multinational organizations such as the North Atlantic Treaty Organization (NATO), the North American Air Defense (NORAD) and foreign governments) which are under the possession

and control of DON shall be coordinated prior to a final release determination being made. Coordination with foreign governments shall be made through the Department of State.

(d) *Government Accounting Office (GAO) documents.* (1) On occasion, the DON receives FOIA requests for GAO documents containing DON information, either directly from requesters or as referrals from GAO. Since the GAO is outside of the Executive Branch and therefore not subject to FOIA, all FOIA requests for GAO documents containing DON information will be processed by the DON under the provisions of the FOIA.

(2) In those instances when a requester seeks a copy of an unclassified GAO report, DON activities may apprise the requester of its availability from the Director, GAO Distribution Center, ATTN: DHISF, P.O. Box 6015, Gaithersburg, MD 20877-1450 under the cash sales program.

(e) *Judge Advocate General Manual (JAGMAN) investigative records.* These records are no longer centrally processed. Accordingly, requests for investigations should be directed to the following officials:

(1) JAGMAN Investigations conducted prior to 1 Jul 95—to the Judge Advocate General (Code 35), Washington Navy Yard, Suite 3000, 1322 Patterson Avenue, SE, Washington, DC 20374-5066.

(2) Command Investigation—to the command that conducted the investigation.

(3) Litigation-Report Investigation—to the Judge Advocate General (Code 35), Washington Navy Yard, Suite 3000, 1322 Patterson Avenue, SE, Washington, DC 20374-5066.

(4) Court or Board of Inquiry—to the Echelon 2 commander over the command that convened the investigation.

(f) *Mailing lists.* Numerous FOIA requests are received for mailing lists of home addresses or duty addresses of DON personnel. Processing of such requests is as follows:

(1) Home addresses are normally not releasable without the consent of the individuals concerned. This includes lists of home addresses and military quarters' addresses without the occu-

pant's name (*i.e.*, exemption (b)(6) applies).

(2) Disclosure of lists of names and duty addresses or duty telephone numbers of persons assigned to units that are stationed in foreign territories, routinely deployable, or sensitive, has also been held by the courts to constitute a clearly unwarranted invasion of personal privacy and must be withheld from disclosure under 5 U.S.C. 552(b)(6). General officers and public affairs officers information is releasable. Specifically, disclosure of such information poses a security threat to those service members because it reveals information about their degree of involvement in military actions in support of national policy, the type of Navy and/or Marine Corps units to which they are attached, and their presence or absence from households. Release of such information aids in the targeting of service members and their families by terrorists or other persons opposed to implementation of national policy. Only an extraordinary public interest in disclosure of this information can outweigh the need and responsibility of the DON to protect the tranquility and safety of service members and their families who repeatedly have been subjected to harassment, threats, and physical injury. Units covered by this policy are:

(i) Those located outside of the 50 States, District of Columbia, Commonwealth of Puerto Rico, Guam, U.S. Virgin Islands, and American Samoa.

(ii) Routinely deployable units—Those units that normally deploy from homeport or permanent station on a periodic or rotating basis to meet operational requirements or participate in scheduled exercises. This includes routinely deployable ships, aviation squadrons, operational staffs, and all units of the Fleet Marine Force (FMF). Routinely deployable units do not include ships undergoing extensive yard work or those whose primary mission is support of training, *e.g.*, yard craft and auxiliary aircraft landing training ships.

(iii) Units engaged in sensitive operations. Those primarily involved in

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training for or conduct of covert, clandestine, or classified missions, including units primarily involved in collecting, handling, disposing, or storing of classified information and materials. This also includes units engaged in training or advising foreign personnel. Examples of units covered by this exemption are nuclear power training facilities, SEAL Teams, Security Group Commands, Weapons Stations, and Communications Stations.

(3) Except as otherwise provided, lists containing names and duty addresses of DON personnel, both military and civilian, who are assigned to units in the Continental United States (CONUS) and U.S. territories shall be released regardless of who has initiated the request.

(4) Exceptions to this policy must be coordinated with CNO (N09B30) or CMC (ARAD) prior to responding to requests, including those from Members of Congress. The policy in paragraphs (f) (1) through (3) should be considered when weighing the releasability of the address or telephone number of a specifically named individual.

(5) DON activities are reminded that e-mail addresses that identify an individual who is routinely deployable, overseas, or assigned to a sensitive unit should not be made available. Additionally, organizational charts for these kinds of units and activities that identify specific members should not be placed on the Internet.

(g) *Medical quality assurance documents.* The Chief, Bureau of Medicine and Surgery (BUMED) is the release/denial authority for all naval medical quality assurance documents as defined by Title 10, United States Code, Section 1102. Requests for medical quality assurance documents shall be promptly referred to BUMED and the requester notified of the referral.

(h) *Mishap investigation reports (MIRs).* The Commander, Naval Safety Center (NAVSAFECEN) is the release/denial authority for all requests for mishap investigations or documents which contain mishap information. All requests or documents located which apply shall be promptly referred to the Commander, Naval Safety Center, Code 503, 375 A Street, Norfolk, VA 23511-4399 for action. Telephonic liaison with

NAVSAFECEN is encouraged. The requester shall be notified of the referral.

(i) *National Security Council (NSC)/White House.* (1) DON activities that receive requests for records of NSC, the White House, or the White House/Military Office (WHMO) shall process the requests.

(2) DON records in which the NSC or the White House has a concurrent reviewing interest, and NSC, White House, or WHMO records discovered in DON activity files, shall be forwarded to CNO (N09B30), 2000 Navy Pentagon, Washington, DC 20350-2000. N09B30, in turn, will coordinate the request directly with DFOISR, so DFOISR can coordinate the request with NSC, White House, or WHMO. After coordination, the records will be returned to the DON activity for their direct response to the requester. During the interim, DON activities should notify the requester that they are coordinating their request and a response will therefore be delayed.

(j) *Naval attache documents/information.* The Director, Defense Intelligence Agency (DIA) has the responsibility for reviewing for release/denial any naval attache-originated documents/information. Accordingly, FOIA requests for naval attache documents or copies of the documents located in DON files or referred in error to a DON activity shall be promptly referred to the Chief, Freedom of Information Act Staff, Defense Intelligence Agency (SVI-1), Washington, DC 20340-5100 for action and direct response to the requester. Ensure that the requester is notified in writing of the transfer to DIA.

(k) *Naval Audit Service reports.* The Director, Naval Audit Service is the release/denial authority for their reports. All requests or documents located which apply shall be promptly referred to the Director, Naval Audit Service, 5611 Columbia Pike, NASSIF Building, Falls Church, VA 22041-5080 for action. The requester shall be notified of the referral.

(l) *Naval Criminal Investigative Service (NCIS) reports.* The Director, NCIS is the release/denial authority for all NCIS reports/information. All requests for and copies of NCIS reports located in DON activity files shall be promptly referred to the Director, NCIS (Code

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OOJF), Washington Navy Yard, Building 111, 716 Sicard Street, SE, Washington, DC 20388-5380 for action and, if appropriate, the requester so notified. Telephonic liaison with NCIS Headquarters is strongly encouraged.

(m) *Naval Inspector General (NAVINGEN) reports.* (1) NAVINGEN is the release/denial authority for all investigations and inspections conducted by or at the direction of NAVINGEN and for any records held by any command that relate to Navy hotline complaints that have been referred to the NAVINGEN. Accordingly, such actions shall be promptly referred to the Naval Inspector General (Code OOL), Building 200, Room 100, Washington Navy Yard, 901 M Street, SE, Washington, DC 20374-5006 for action and, if appropriate, the requester so notified.

(2) Requests for local command inspector general reports which have not been referred to NAVINGEN should be processed by the command that conducted the investigation and NAVINGEN advised as necessary.

(3) The Deputy Naval Inspector General for Marine Corps Matters (DNIGMC) is the release/denial authority for all investigations conducted by the DNIGMC. Requests for local Marine Corps command Inspector General reports shall be coordinated with the DNIGMC.

(n) *Naval Nuclear Propulsion Information (NNPI).* The Director, Naval Nuclear Propulsion Program (CNO (NOONB)/NAVSEA (08)) is the release/denial authority for all information and requests concerning NNPI. Naval activities receiving such requests are responsible for searching their files for responsive records. If no documents are located, the naval activity shall respond to the requester and provide CNO (NOONB) with a copy of the request and response. If documents are located, the naval activity shall refer the request, responsive documents, and a recommendation regarding release to the Director, Naval Nuclear Propulsion Program (NOONB), 2000 Navy Pentagon, Washington, DC 20350-2000, who will make the final release determination to the requester, after coordinating the release through DoD activities.

(o) *Naval Telecommunications Procedures (NTP) publications.* The Commander, Naval Computer and Telecommunications Command is the release/denial authority for NTP publications. All requests or documents located which apply shall be promptly referred to the Commander, Naval Computer and Telecommunications Command (Code NOOJ), 4401 Massachusetts Avenue, NW, Washington, DC 20394-5460 for action and direct response to the requester.

(p) *News media requests.* (1) Respond promptly to requests received from news media representatives through public information channels, if the information is releasable under FOIA. This eliminates the requirement to invoke FOIA and may result in timely information being made available to the public.

(2) In those instances where records/information are not releasable, either in whole or in part, or are not currently available for a release consideration, Public Affairs Officers shall promptly advise the requester of where and how to submit a FOIA request.

(3) DON activities receiving and processing requests from members of the press shall ensure that responses are cleared through their public affairs channels.

(q) *Records originated by other government agencies.* (1) A DON activity may refer a FOIA request for any record that originated in an agency outside the DON or that is based on information obtained from an outside agency to the cognizant agency for direct response to the requester after coordination with the outside agency, if that agency is subject to FOIA. Otherwise, the DON activity must respond to the request.

(2) A DON activity shall refer to the agency that provided the record any FOIA request for investigative, intelligence, or any other type of records that are on loan to the DON for a specific purpose, if the records are restricted from further release and so marked. However, if for investigative or intelligence purposes, the outside agency desires anonymity, a DON activity may only respond directly to the requester after coordination with the outside agency.

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(r) *Submitter documents.* (1) When a request is received for a record containing confidential commercial information that was submitted to the Government, the requirements of Executive Order 12600 shall apply. Specifically, the submitter shall be notified of the request (telephonically, by letter, or by facsimile) and afforded a reasonable amount of time (anywhere from 2 weeks to a month depending on the circumstances) to present any objections concerning release, unless it is clear there can be no valid basis for objection. For example, the record was provided with actual or presumptive knowledge of the submitter that it would be made available to the public upon request.

(2) The DON activity will evaluate any objections and negotiate with the submitter as necessary. When a substantial issue has been raised, the DON activity may seek additional information from the submitter and afford the submitter and requester reasonable opportunities to present their arguments in legal and substantive issues prior to making an agency determination.

(3) The final decision to disclose information claimed to be exempt under exemption (b)(4) shall be made by an official at least equivalent in rank to the IDA and the submitter advised that he or she may seek a restraining order or take court action to prevent the release. The submitter is given 10 days to take action.

(4) Should the submitter take such action, the requester will be notified and no action will be taken on the request until the outcome of the court action is known.

(s) Technical Documents Controlled by Distribution Statements B, C, D, E, F, or X shall be referred to the controlling DoD office for review and release determination.

§ 701.12 FOIA appeals/litigation.

(a) *Appellate authorities.* SECNAV has delegated his appellate authority to the JAG and the DONGC to act on matters under their cognizance. Their responsibilities include adjudicating appeals made to SECNAV on: denials of requests for copies of DON records or portions thereof; disapproval of a fee category claim by a requester; dis-

approval of a request to waive or reduce fees; disputes regarding fee estimates; reviewing determinations not to grant expedited access to agency records, and reviewing "no record" determinations when the requester considers such responses adverse in nature. They have the authority to release or withhold records, or portions thereof; to waive or reduce fees; and to act as required by SECNAV for appeals under 5 U.S.C. 552 and this instruction. The JAG has further delegated this appellate authority to the Assistant Judge Advocate General (Civil Law). The DONGC has further delegated this appellate authority to the Principal Deputy General Counsel, the Deputy General Counsel, and the Associate General Counsel (Management).

(1) In their capacity, appellate authorities will serve as principal points of contact on DON FOIA appeals and litigation; receive and track FOIA appeals and ensure responses are made in compliance with 5 U.S.C. 552, DoD 5400.7 and 5400.7-R, and the instruction in this part; complete responsive portions of the Annual FOIA Report that addresses actions on appeals and litigation costs during the fiscal year and submit to CNO (N09B30); provide CNO (N09B30) with a copy of all appeal determinations as they are issued; and keep CNO (N09B30) informed in writing of all FOIA lawsuits as they are filed against the DON. Appellate authorities shall facsimile a copy of the complaint to CNO (N09B30) for review and provide updates to CNO (N09B30) to review and disseminate to DFOISR.

(2) OGC's cognizance: Legal advice and services to SECNAV and the Civilian Executive Assistants on all matters affecting DON; legal services in subordinate commands, organizations, and activities in the areas of business and commercial law, real and personal property law, intellectual property law, fiscal law, civilian personnel and labor law, environmental law, and in coordination with the JAG, such other legal services as may be required to support the mission of the Navy and the Marine Corps, or the discharge of the General Counsel's responsibilities; and conducting litigation involving the areas enumerated above and oversight of all litigation affecting the DON.