



DEPARTMENT OF THE NAVY
OFFICE OF THE CHIEF OF NAVAL OPERATIONS
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IN REPLY REFER TO

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From: Chief of Naval Operations
To: EMail Distribution List (FOIA)
Subj: DON FOIA PROGRAM UPDATE/POLICY CHANGE
Ref: (a) SECNAVINST 5720.42F

1. On November 15, 2002, Congress passed the Intelligence Authorization Act for FY 2003, Public Law 107-306. Signed by President Bush on November 27, 2002, the legislation amended the (a)(3) provision of the Freedom of Information Act (FOIA) as follows:

SEC. 312. PROHIBITION ON COMPLIANCE WITH REQUESTS FOR INFORMATION SUBMITTED BY FOREIGN GOVERNMENTS.

Section 552(a)(3) of title 5, United States Code, is amended--

(1) in subparagraph (A) by inserting "and except as provided in subparagraph (E)," after "of this subsection,"; and

(2) by adding at the end the following:

"(E) An agency, or part of an agency, that is an element of the intelligence community (as that term is defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4))) shall not make any record available under this paragraph to--

"(i) any government entity, other than a State, territory, commonwealth, or district of the United States, or any subdivision thereof; or

"(ii) a representative of a government entity described in clause (i)."

2. In effect, this new statutory language in the FOIA now precludes any covered intelligence agency from disclosing records in response to any FOIA request that is made by any foreign government or international

governmental organization. By its terms, it prohibits disclosure in response to requests made by such other-than-U.S. governmental entities either directly or through a "representative." This amendment will impact the Department of the Navy. I along with OSD and the other DoD Components are examining the change and discussing the impact and how to implement within DoD. Because there are a lot of issues to resolve, I anticipate policy guidance being issued within the next 30-60 days. In the interim, intelligence activities receiving such requests should contact this office for guidance. You can review DOJ's analysis at FOIA Post (see Resource Materials at foia.navy.mil).

3. This office has also been rewriting paragraph 14 to reference (a), "Processing Specific Kinds of Records," in an effort to incorporate policy changes, administrative changes, and the recent amendment to the FOIA. One change that has been staffed and can be immediately implemented is paragraph 14k, Naval Audit Service Reports. Please change paragraph 14k to reference (a) to read as follows:

k. Naval Audit Service Reports

(1) The Auditor General of the Navy is the release/denial authority for Navy Audit reports. All requests for Naval Audit Service reports shall be promptly referred to the Auditor General of the Navy, Naval Audit Service, 1006 Beatty Place SE, Washington Navy Yard, DC 20374-5005 for action. Activities locating Naval Audit Service reports or portions thereof in their files in response to a FOIA request, shall refer those documents to the Naval Audit Service for their review and direct response to the requester. In both instances, activities shall notify the requester of the referral.

(2) Findings and recommendations in a final audit report to which management disagrees encompass the final findings and recommendations of the Auditor General of the Navy. Prior to the Auditor General's public disclosure of a final audit report that contains undecided issues, the Auditor General shall provide affected activities the opportunity to comment on public disclosure of any undecided findings or recommendations. Such findings and recommendations will not change as a result of the audit resolution process with management. However, such final reports may not reflect management's final resolution on

the issues raised in the audit and may be deliberative to management's decision-making process. Accordingly, it is appropriate for the Auditor General to initially claim exemption (b) (5) to withhold from public disclosure undecided issues in a final audit report.

(3) If the Auditor General decides to initially withhold contested findings or recommendations under the deliberative process privilege of exemption (b) (5) of the FOIA, a disclosure shall be made of any withheld information no later than six months from the date of issuance of the final audit report.


(4) When a disclosure of a final report containing undecided issues is made, the Auditor General shall notify the FOIA requester that the final report contains such undecided issues. In addition, the Auditor General will refer the request to the Naval IG for release to the requester of the IG addendum that reflects the completion of the audit resolution process.

(5) Prior to release of a final audit report under FOIA, the Auditor General shall notify the Secretary of the Navy; Under Secretary of the Navy; Director, Navy Staff and/or Director, Marine Corps Staff; Chief, Office of Information; Office of Legislative Affairs; Assistant Secretary of the Navy (FMB); and other DON offices responsible for implementing audit recommendations.

4. The DON FY 2002 Annual FOIA Report is now available under foia.navy.mil/. Go to the electronic reading room and download it from the SECNAV/OPNAV reading room.

5. NMCI has arrived resulting in the change to our email addresses. You can email me at navyfoia@navy.mil or doris.lama@navy.mil/. Sarah English's contact information has changed as follows: email: sarah.english@navy.mil; telephone number 202-685-6546; Code N09B10C.

6. The change to paragraph 14 will be made in the next update to reference (a). Please ensure widest dissemination.



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By direction

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