

(f) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.

(g) Could reasonably be expected to endanger the life or physical safety of any individual.

(2) Examples include:

(a) Statements of witnesses and other material developed during the course of the investigation and all materials prepared in connection with related government litigation or adjudicative proceedings.

(b) The identity of firms or individuals being investigated for alleged irregularities involving contracting with Department of Defense when no indictment has been obtained nor any civil action filed against them by the United States.

(c) Information obtained in confidence, expressed or implied, in the course of a criminal investigation by a criminal law enforcement agency or office within a DoD Component, or a lawful national security intelligence investigation conducted by an authorized agency or office within a DoD Component. National security intelligence investigations include background security investigations and those investigations conducted for the purpose of obtaining affirmative or counterintelligence information.

(3) The right of individual litigants to investigative records currently available by law (such as, the Jencks Act, 18 U.S.C. 3500) is not diminished.

(4) When the subject of an investigative record is the requester of the record, it may be withheld only as authorized by DoD Directive 5400.11 (32 CFR part 286a).

(5) Exclusions. Excluded from the above exemptions are the following two situations as applicable to the Department of Defense and the OIG:

(a) Whenever a request is made which involves access to records or information compiled for law enforcement purposes, and the investigation or proceeding involves possible violation of criminal law where there is reason to believe that the subject of the investigation or proceeding is unaware of its pendency, and the disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings, the OIG may, during only such times as that circumstance continues, treat the records or information as not subject to the FOIA. In such situation, the response to the requesters will state that no records were found.

(b) Whenever informant records maintained by a criminal law enforcement organization within the OIG under the informant's name or personal identifier are requested by a third party using the informant's name or personal identifier, the OIG may treat the records as not subject to the

FOIA, unless the informant's status as an informant has been officially confirmed. If it is determined that the records are subject to exemption (b)(7), the response to the requester will state that no records were found.

H. Exemption (b)(8)

Those contained in or related to examination, operation or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions.

I. Exemption (b)(9)

Those containing geological and geophysical information and data (including maps) concerning wells.

PART 296—NATIONAL RECONNAISSANCE OFFICE FREEDOM OF INFORMATION ACT PROGRAM REGULATION

Sec.

- 296.1 Purpose.
- 296.2 Definitions.
- 296.3 Indexes.
- 296.4 Procedures for request of records.
- 296.5 Appeals.

AUTHORITY: 5 U.S.C. 552.

SOURCE: 58 FR 60382, Nov. 16, 1993, unless otherwise noted.

§ 296.1 Purpose.

The purpose of this part is to provide policies and procedures for the National Reconnaissance Office (NRO) implementation of the Freedom of Information Act (FOIA), and to promote uniformity in the NRO FOIA program.

§ 296.2 Definitions.

(a) *Freedom of Information Act Appellate Authority.* The Chief of Staff, NRO.

(b) *Initial Denial Authority.* The Chief, Information Access and Release Center, NRO.

[62 FR 12544, Mar. 17, 1997]

§ 296.3 Indexes.

The NRO does not originate final orders, opinions, statements of policy, interpretations, staff manuals or instructions that affect a member of the public of the type covered by the indexing requirement of 5 U.S.C. 552(a)(2). The Director, NRO, has therefore determined, pursuant to pertinent statutory and executive order requirements, that