

for civilian employment or membership in the Armed Forces, and the eligibility of individuals (civilian, military, or contractor employees) for security clearances, or for access to particularly sensitive classified information.

(2) Files containing reports, records, and other material pertaining to personnel matters in which administrative action, including disciplinary action, may be taken.

(b) Home addresses are normally not releasable without the consent of the individuals concerned. In addition, lists of Department of the Navy military and civilian personnel's names and duty addresses who are assigned to units that are sensitive, routinely deployable, or stationed in foreign territories can constitute a clearly unwarranted invasion of personal privacy.

(1) Privacy interest. A privacy interest may exist in personal information even though the information has been disclosed at some place and time. If personal information is not freely available from sources other than the Federal Government, a privacy interest exists in its nondisclosure. The fact that the Federal Government expended funds to prepare, index and maintain records on personal information, and the fact that a requester invokes FOIA to obtain these records indicates the information is not freely available.

(2) Published telephone directories, organizational charts, rosters and similar materials for personnel assigned to units that are sensitive, routinely deployable, or stationed in foreign territories are withholdable under exemption (b)(6).

(c) This exemption is relevant to a request for information that is intimate to an individual or that possibly could have adverse effects upon that individual or his or her family if disclosed. Subpart F of this Part 701 lists several examples of non-derogatory information about the official character of a naval member or employee that can routinely be disclosed to a member of the public without constituting a clearly unwarranted invasion of personal privacy of the individual concerned.

(d) Individuals' personnel, medical, or similar files may be withheld from

them or their designated legal representative only to the extent consistent with PA.

(e) When determining whether a release is "clearly unwarranted," the public interest in release must be balanced against the sensitivity of the privacy interest threatened. For example, lists of names and duty addresses of Department of the Navy personnel (civilian and military) assigned to units that are sensitive, routinely deployable, or stationed in foreign territories must be withheld because release could aid in the targeting of Department of the Navy employees and their families by terrorists. See paragraph (p) of §701.8 regarding requests for mailing lists.

(f) When withholding information solely to protect the personal privacy of the subject of the record, information should not be withheld from that individual or from his or her designated representative. The personal privacy of others discussed in that record may constitute a basis for deleting reasonably segregable portions of the record even when providing it to the subject of the record. This exemption shall not be exercised in an attempt to protect the privacy of a deceased person but may be used to protect the privacy of the deceased person's family.

(g) Individual's personnel, medical, or similar file may be withheld from them or their designated legal representative only as consistent with SECNAVINST 5211.5C, "Personal Privacy and Rights of Individuals Regarding Records Pertaining to Themselves."

(h) A clearly unwarranted invasion of the privacy of the persons identified in a personnel, medical, or similar record may constitute a basis for deleting those reasonably segregable portions of that record, even when providing it to the subject of the record. When withholding personal information from the subject of the record, legal counsel should first be consulted.

**§ 701.29 Exemption (b)(7).**

Records or information compiled for law enforcement purposes, (i.e., civil, criminal, or military law, including

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the implementation of Executive orders or regulations issued pursuant to law). This exemption may be invoked to prevent disclosure of documents not originally created for, but later gathered for law enforcement purposes.

(a) This exemption applies, however, only to the extent that production of such law enforcement records or information:

(1) Could reasonably be expected to interfere with enforcement proceedings (5 U.S.C. 552(b)(7)(A));

(2) Would deprive a person of the right to a fair trial or an impartial adjudication (5 U.S.C. 552(b)(7)(B));

(3) Could reasonably be expected to constitute an unwarranted invasion of personal privacy of a living person, including surviving family members of an individual identified in such a record (5 U.S.C. 552(b)(7)(C));

(i) This exemption also applies when the fact of the existence or nonexistence of a responsive record would itself reveal personally private information, and the public interest in disclosure is not sufficient to outweigh the privacy interest. In this situation, naval activities shall neither confirm nor deny the existence or non-existence of the record being requested.

(ii) A refusal to “neither confirm nor deny” response must be used consistently, not only when a record exists, but also when a record does not exist. Otherwise, the pattern of using a “no records” response when a record does not exist and a “refusal to neither confirm nor deny” when a record does exist will itself disclose personally private information.

(iii) Refusal to “neither confirm nor deny” should not be used when the person whose personal privacy is in jeopardy has provided the requester with a waiver of his or her privacy rights; or, the person whose personal privacy is in jeopardy is deceased, and the agency is aware of that fact.

(4) could reasonably be expected to disclose the identity of a confidential source, including a source within the DON, a state, local, or foreign agency or authority, or any private institution which furnishes information on a confidential basis; could disclose information furnished from a confidential source and obtained by a criminal law

enforcement authority in a criminal investigation or by an agency conducting a lawful national security intelligence investigation (5 U.S.C. 552(b)(7)(D));

(5) 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 (5 U.S.C. 552(b)(7)(E)); or,

(6) Could reasonably be expected to endanger the life or physical safety of any individual (5 U.S.C. 552(b)(7)(F)).

(b) Examples include:

(1) 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.

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

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

(c) The right of individual litigants to investigate records currently available by law.

(d) When the subject of an investigative record is the requester of the record, it may be withheld only as authorized by SECNAVINST 5211.5C, “Personal Privacy and Rights of Individuals Regarding Records Pertaining to Themselves.”

(e) *Exclusions.* Excluded from this exemption are the following two situations:

(1) Whenever a request is made which involves access to records or information compiled for law enforcement purposes, and the investigation or proceeding involves a 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, naval activities may, during only such times as those circumstances continue, treat the records or information as not subject to exemption 7. In such situation, the response to the requester will state no records were found.

(2) Whenever informant records maintained by a criminal law enforcement organization within DON under the informant's name or personal identifier, the naval activity may treat the records as not subject to exemption 7, unless the informant's status as an informant has been officially confirmed. If it is determined that the records are not subject to exemption 7, the response to the requester will state no records were found.

**§ 701.30 Exemption (b)(8).**

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

**§ 701.31 Exemption (b)(9).**

Exempts those records containing geological and geophysical information and data, including maps, concerning wells.

**Subpart C—Addresses for Department of the Navy Records and Locations for Public Inspection**

SOURCE: 56 FR 66590, Dec. 24, 1991, unless otherwise noted.

EDITORIAL NOTE: At 56 FR 66586, 66590, Dec. 24, 1991, §§701.21—701.32 (subparts B and C) were revised. Section 701.31 appears at both subpart B and subpart C. The Agency will publish a correction in the FEDERAL REGISTER at a later date.

**§ 701.31 Addresses for requests for Department of the Navy records.**

The following addresses delineate the location of commonly requested information. Members of the public are encouraged to write directly to the official having cognizance over the record(s), as it will expedite processing. When the official having custody of the record is not known, the request should be addressed to the originating official or the official having primary responsibility for the subject matter involved. The following are the most commonly requested types of records:

(a) *Audit reports.* Send requests for internal audit matters to the Auditor General of the Navy, P.O. Box 1206, Falls Church, VA 22041-0206.

(b) *Chaplain Corps.* Send requests for religious affairs matters to the Chief of Chaplains, Navy Department, Washington, DC 20370-2000.

(c) *Civilian personnel records.* (1) Send requests for personnel records of current civilian employees, or those separated from Federal employment less than 30 days, to the employing installation marked for the attention of the civilian personnel officer.

(2) Send requests for individuals formerly employed by the Department of the Navy, or separated from Federal employment for more than 30 days, to the Director, National Personnel Records Center, (Civilian Personnel Records), 111 Winnebago Street, St. Louis, MO 63118.

(d) *Contractual/procurement records and related matters.* (1) Send requests for copies of Navy procurement directives and Defense Federal Acquisition Regulations (DFARs) to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

(2) Send requests for copies of current contracts to the contracting officer or head of the procurement activity when known. If unknown, submit requests for Navy contracts to the Chief of Naval Operations (N09B30), 2000 Navy Pentagon, Washington, DC 20350-2000, and Marine Corps contracts to the Deputy Chief of Staff for Installations and Logistics, Headquarters U.S. Marine Corps, 2 Navy Annex, Washington, DC 20380-0001.