of the request and response should be provided.

(3) The appropriate JAG attorney or field counsel should be consulted on the interpretation and application of this instruction where a denial of a request is expected to be judicially challenged.

(j) *Response to the requester.* (1) Initial determinations to release or deny a record normally shall be made and the decision reported to the requester within 10 working days after receipt of the request by the official designated to respond. When the time for response becomes an issue, the official responsible for replying shall acknowledge to the requester the date of the receipt of the request.

(2) When a decision is made to release a record, a copy should be made available promptly to the requester once he or she has complied with preliminary procedural requirements.

(3) When a request for a record is denied in whole or in part, the official designated to respond shall inform the requester in writing of the IDA's name, rank, and title, shall cite the specific exemption(s) that apply in sufficient detail, and provide the requester with the name and address of the appellate authority, should the requester desire to file an appeal. When claiming exemption ''(b)(1),'' IDAs shall to the extent reasonably feasible, provide the requester with a summary of the applicable criteria for classification. Additionally, the marking ''For Official Use Only'' on a requested document does not constitute a basis for denial. Rather, it alerts the reviewer that the document may contain information which is protectible under exemptions (b)(2) through (b)(9). It is up to the reviewing official to advise the requester of the applicable exemptions and to release all ''reasonably segregable'' information.

(k) *Fees.* The final response to the requester should contain information on the fee status of the request. Generally, information shall reflect one or more of the following conditions:

(1) ''The fees for processing your request total $ . Please forward your check or money order made payable to the Treasurer of the United States to this office within 30 days.'' Subpart D of this part addresses when fees may be collected in advance of forwarding the documents.

(2) All fees have been received.

(3) Fees have been waived because they fall below the automatic fee waiver threshold.

(4) A request for waiver/reduction of fees has been denied.

(5) Fees have been waived or reduced from a specified amount to another specified amount because the rationale provided in support of a request for waiver has been accepted.

(6) Fees due in a specified amount have not been received (see subpart D of this part for specific information on FOIA fees and fee rates for technical data).

### § 701.8 Records requiring special handling.

The following actions shall be taken on requests for:

(a) *Classified records.* (1) If a naval activity receives a request for information whose existence or nonexistence is itself classifiable under Executive Order 12356, 50 U.S.C. 401, the naval activity shall refuse to confirm or deny the existence or nonexistence of the requested information.

(2) If a naval activity receives a request for documents in its custody that were classified by another agency, or which contains information classified by another agency, it shall refer the request and copies of the requested documents to the originating agency for processing, and may, after consultation with the originating agency inform the requester of the referral. Referred records shall be identified consistent with security requirements. In cases where the originating agency determines they can neither confirm nor deny the existence or nonexistence of the requested information, the referring agency shall deny the request.

(3) If a naval activity receives a request for classified records or information originated by another naval activity, for which the head of the activity is not the classifying authority under OPNAV Instruction 5520.1 series, ''Department of the Navy Information and

Personnel Security Program Regulation,'' the request, copies of the requested documents, and a recommendation concerning release (if appropriate) shall promptly be readdressed and forwarded to the official having classification authority for the subject matter. That official will make a release determination concerning the classified information and notify the requester, or the activity originally receiving the request, in 10 working days of that determination. The naval activity that initially received the request has responsibility for notifying the requester of the referral. Referred records shall only be identified to the extent consistent with security requirements.

(b) *Naval Investigative Service (NIS)/ Naval Criminal Investigative Service (NCIS) reports.* The Director, Naval Criminal Investigative Service, is the release/denial authority for all NIS/ NCIS reports. Accordingly, a request for a NIS/NCIS report shall be promptly readdressed to NCIS and the requester notified of the referral. Direct liaison with NCIS prior to the referral is encouraged.

(c) *Naval Inspector General reports.* (1) The Naval Inspector General (NAVINSGEN) is the release/denial authority for all investigations and inspections conducted by or at the direction of NAVINSGEN and for any records held by any command that relate to Navy hotline complaints that have been referred to the NAVINSGEN. Accordingly, such requests shall be promptly readdressed and forwarded to NAVINSGEN and the requester notified of the referral. Requests for local command Inspector General reports which have not been referred to the NAVINSGEN may be released by the local command.

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

(d) *Manual of the Judge Advocate General (JAGMAN) investigative reports and courts-martial records.* NJAG is the release/denial authority for all JAGMAN investigative reports and courts-martial records. Requests for JAGMAN investigative reports and courts-martial records shall be promptly readdressed and forwarded to NJAG and the requester notified of the referral.

(e) *Mishap Investigation Reports (MIRs).* The Commander, Naval Safety Center (COMNAVSAFECEN) is the release/denial authority for all requests for mishap investigation reports. Requests for mishap investigation reports shall be promptly readdressed and forwarded to COMNAVSAFECEN and the requester notified of the referral.

(f) *Naval Audit Service reports.* The Auditor General of the Navy is the release/denial authority for all Naval Audit Service reports. Requests for audit reports shall be promptly readdressed and forwarded to the Auditor General and the requester notified of the referral.

(g) *Technical documents controlled by distribution statements.* A request for a technical document to which ''Distribution Statement B, C, D, E, F, or X'' (see OPNAVINST 5510.1 series) is affixed shall be promptly readdressed and forwarded to the ''controlling DOD office'' for review and release determination. The naval activity that initially received the request is responsible for notifying the requester of the referral. Direct liaison with the cognizant official prior to referral is encouraged.

(h) *Records originated by other government agencies.* When a request for records originated by an agency outside the Department of the Navy is received, promptly readdress and forward the request along with copies of the requested documents to the cognizant agency and notify the requester of the referral. That may be accomplished by sending a copy of the referral letter, less attachments, to the requester. The 10 working day time limit begins when the request is received by the cognizant agency. If additional guidance is required, contact CNO (N09B30) or CMC (ARAD), as appropriate. Direct liaison with the cognizant agency is encouraged to ensure expeditious handling of the request.

(i) *National Security Council (NSC)/ White House Documents.* The Director, NSC is the release/denial authority for NSC documents or White House files. Requesters seeking NSC or White

House documents should be notified to write directly to the NSC or White House for such documents. Department of the Navy documents in which NSC or the White House has a concurrent reviewing interest shall be forwarded to the Office of the Assistant Secretary of Defense (Public Affairs) (OASD(PA)), ATTN: Directorate for Freedom of Information and Security Review (DFOISR), which shall effect coordination with the NSC or White House, and return the documents to the originating activity after review and a release determination is made. NSC or White House documents discovered in a naval activity's files which are responsive to a FOIA request shall be forwarded to the Director, Freedom of Information and Security Review, OASD(PA), for subsequent coordination with the NSC or White House and returned to the naval activity for a release determination. Additionally, in such instances an information copy should be provided to CNO (N09B30).

(j) *Naval Telecommunications Procedures (NTP) publications.* The Commander, Naval Computer and Telecommunications Command (COMNAVCOMTELCOM) is the release/denial authority for NTP publications. Requests for NTP publications shall be promptly readdressed and forwarded to COMNAVCOMTELCOM and the requester notified of the referral. Direct liaison with COMNAVCOMTELCOM prior to referral is encouraged.

(k) *Naval Nuclear Propulsion Information (NNPI).* The Director, Naval Nuclear Propulsion Program (N00N/NAVSEA 08) is the release/denial authority for all information concerning NNPI. Naval activities receiving such requests are responsible for searching their files for responsive records. If no documents are located, the naval activity should respond to the requester and provide N00N with a copy of the request and response. If documents are located, the request, responsive records, and a recommendation regarding release should be promptly readdressed to the CNO (N00N/NAVSEA 08), who will ensure proper coordination and review.

(l) *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 shall be promptly readdressed and forwarded to BUMED and the requester notified of the referral.

(m) *Records of a non-U.S. Government source.* (1) When a request is received for a record that was obtained from a non-U.S. Government source, or for a record containing information clearly identified as provided by a non-U.S. Government source, the source of the record or information (known as ''the submitter'' for proprietary data under FOIA exemption (b)(4)) shall be promptly notified of the request and afforded reasonable time (e.g., 30 calendar days) to present any objections concerning release, unless it is clear that there can be no valid basis for objection. That practice is required for FOIA requests for data not deemed clearly exempt from disclosure under exemption (b)(4). If, for example, the record or information was provided with actual or presumptive knowledge of the non-U.S. Government source and established that it would be made available to the public upon request, there is no obligation to notify the source. Any objections shall be evaluated. The final decision to disclose information claimed to be exempt under exemption (b)(4) shall be made by an official equivalent in rank to the official who would make the decision to withhold that information under FOIA. When a substantial issue has been raised, the naval activity may seek additional information from the source of the information and afford the source and requester reasonable opportunities to present their arguments on legal and substantive issues prior to making an agency determination. When the source advises he or she will seek a restraining order or take court action to prevent release of the record or information, the requester shall be notified and action on the request normally shall not be taken until after the outcome of that court action is known. When the requester brings court action to compel disclosure, the submitter shall be promptly notified of this action.

(2) The coordination provisions of this paragraph also apply to any non-U.S. Government record in the possession and control of the Department of the Navy from multinational organizations, such as the North Atlantic Treaty Organization (NATO) and North American Air Defense (NORAD), or foreign governments. Coordination with foreign governments will be made through the Department of State.

(n) *Government Accounting Office (GAO) documents.* On occasion, the Department of the Navy receives FOIA requests for GAO documents containing Department of the Navy information, either directly from requesters, or as referrals from the GAO. Since the GAO is outside the Executive Branch and therefore not subject to FOIA, all FOIA requests for GAO documents containing Department of the Navy information will be processed by the Department of the Navy. In those instances when a requester seeks a copy of an unclassified GAO report, naval 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 their cash sales program.

(o) *Mailing lists.* Frequent FOIA requests are received for mailing lists of the home addresses and/or duty station addresses of naval personnel.

(1) A list of home addresses is not releasable without the individuals' consent because it is a clearly unwarranted invasion of the individuals' personal privacy, and therefore, may be withheld from disclosure under 5 U.S.C. 552(b)(6), see subpart B of this part.

(2) Unclassified information about service members may be withheld when disclosure ''would constitute a clearly unwarranted invasion of personal privacy'' under FOIA (exemption (b)(6) applies). Disclosure of lists of names and duty addresses or duty telephone numbers of members assigned to units that are stationed in foreign territories, routinely deployable, or sensitive, constitutes a clearly unwarranted invasion of personal privacy. 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 naval unit to which they are attached, and their presence or absence from their households. Release of such information aids 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 Navy 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 units located outside 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 whose primary mission is support of training, e.g., yard craft and auxiliary aircraft landing training ships.

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

(3) Except as otherwise provided, lists containing names and duty addresses of DOD 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 the CNO (N09B30) or

CMC (ARAD) prior to responding to requests, including those from Members of Congress. The foregoing policy should be considered when weighing the releasability of the address or phone number of a specifically named individual.

[56 FR 66574, Dec. 24, 1991, as amended at 59 FR 29721, June 9, 1994]

### § 701.9 For Official Use Only (FOUO).

FOUO is a marking which is placed on documents to alert the holder that they contain information that may be withheld under exemptions (b)(2) through (b)(9) of the FOIA. Because FOUO is not a security classification, exemption (b)(1) does not apply.

(a) *Prior FOUO application.* The prior application of FOUO is not a conclusive basis for withholding a record requested under FOIA. When such a record is requested, it shall be evaluated to determine whether FOIA exemptions apply in withholding all or portions of the record. Information which is reasonably segregable and does not fall under a FOIA exemption(s) must be released to the requester.

(b) *Historical papers.* Records such as notes, working papers, and drafts retained as historical evidence of Department of the Navy actions have no special status apart from FOIA exemptions.

(c) *Time to mark records.* The marking of records at the time of their creation provides notice of FOUO content and facilitates review when a record is requested under the FOIA. Records requested under FOIA that do not bear such markings, shall not be assumed to be releasable without examination for the presence of information that requires continued protection and qualifies as exempt from public release.

(d) *Distribution statement.* Information in a technical document that requires a distribution statement under OPNAVINST 5510.1 series, ''Department of the Navy Information and Personnel Security Program Regulation,'' shall bear that statement and may be marked FOUO, as appropriate.

(e) *Location of markings.* (1) An unclassified document that contains FOUO information shall have FOR OFFICIAL USE ONLY typed, stamped, or printed in capital letters centered at the bottom on the outside of the front cover (if any), on each page containing FOUO information, and on the outside of the back cover (if any).

(2) An unclassified directive that contains FOUO information shall have FOR OFFICIAL USE ONLY typed, stamped, or printed in capital letters centered at the bottom on the outside of the front cover (if any), on each page of the directive top and bottom, and on the outside of the back cover (if any).

(3) Within a classified document, an individual page that contains both FOUO and classified information shall be marked at the top and bottom with the highest security classification of information appearing on the page.

(4) Within a classified or unclassified document, an individual page that contains FOUO information, but does not contain classified information, shall have FOR OFFICIAL USE ONLY typed, stamped, or printed in capital letters centered at the top and bottom edge of the page.

(5) Other records, such as photographs, films, cassette tapes, movies, or slides, shall be marked FOR OFFICIAL USE ONLY so that a recipient or viewer knows the status of the information.

(6) Unclassified automatic data processing (ADP) media with FOUO information shall be marked as follows:

(i) An unclassified deck of punched or aperture cards with FOUO information shall be marked as a single document with FOR OFFICIAL USE ONLY marked on the face of the first and last card, and on the top of the deck.

(ii) An unclassified magnetic tape, cassette, or disk pack that contains FOUO information shall have FOR OFFICIAL USE ONLY marked externally on a removable label. The resulting hard copy report or computer printout shall reflect the FOR OFFICIAL USE ONLY marking on the top and bottom of each page. It may be accomplished by using a programmable header or marking the hard copy manually.

(7) FOUO material transmitted outside the Department of the Navy requires an expanded marking to explain the significance of the FOUO marking. This may be accomplished by typing or stamping the following statement on