

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

the record prior to transfer: "This document contains information EXEMPT FROM MANDATORY DISCLOSURE under the FOIA. Exemption(s)...apply(ies)."

(f) *Release and transmission procedures.* Until FOUO status is terminated, the following release and transmission instructions apply:

(1) FOUO information may be disseminated within Department of the Navy activities and between officials of the Department of the Navy and contractors and grantees who conduct official business for the Department of the Navy or Department of Defense. Recipients shall be made aware of the status of such information, and transmission shall be by means that preclude unauthorized public disclosure. Transmittal documents shall call attention to the presence of FOUO attachments.

(2) Department of the Navy holders of FOUO information may convey such information to officials in other departments or agencies of the executive and judicial branches to fulfill a governmental function, subject to any limitations contained in the Privacy Act (PA) (see Subpart F of this Part 701), pertaining to disclosure of personal information from PA record systems. When transmitting these records, ensure they are marked FOR OFFICIAL USE ONLY, and the recipient is advised the information has been exempt from public disclosure under FOIA and that special handling instructions do or do not apply. For purposes of disclosing records, Department of Defense is the "agency."

(3) Records released to Congress or the GAO should be reviewed to see if the information warrants FOUO status. If not, prior FOUO markings shall be removed. If the withholding criteria are met, the records shall be marked FOUO and the recipient provided an explanation for such exemption and marking. Alternatively, the recipient may be requested, without marking the record, to protect it against public disclosure for reasons that are explained.

(4) Each part of electronically transmitted messages containing FOUO information shall be marked appropriately. Unclassified messages containing FOUO information shall con-

tain the abbreviation "FOUO" before the beginning of the text. Such messages shall be transmitted per communications security procedures in ACP-121 (United States Supplement 1, "Communication Instructions") for FOUO information.

(g) *Transporting FOUO information.* Records which contain FOUO information shall be transported in a manner that precludes disclosure of contents. If not commingled with classified information, FOUO information may be sent via first-class mail or parcel post. Bulky shipments that otherwise qualify under postal regulations may be sent fourth-class mail.

(h) *Safeguarding FOUO information.* (1) During normal working hours, records determined to be FOUO shall be placed in an out-of-sight location if the work area is accessible to non-governmental personnel.

(2) At the close of business, FOUO records shall be stored to preclude unauthorized access. Filing such material with other unclassified records in unlocked files, desks, or similar containers is adequate when U.S. Government or government contractor internal building security is provided during non-duty hours. When internal security control is not exercised, locked buildings or rooms normally provide adequate after-hours protection. If such protection is not considered adequate, FOUO material shall be stored in locked receptacles, such as file cabinets, desks, or bookcases. FOUO records that are subject to the provisions of the PA (see Subpart F of this Part 701) shall meet the safeguards for that group of records as outlined in the PA systems notice.

(3) Guidance for safeguarding media marked FOUO and processed by an ADP system, activity, or network is addressed in OPNAVINST 5239.1 series, "Department of the Navy Automatic Data Processing Security Program."

(i) *Termination.* The originator or other competent authority, such as an IDA or appellate authority, will terminate FOUO markings or status when the information no longer requires protection from public disclosure. When FOUO status is terminated, all known holders shall be notified as practical. Upon notification, holders shall remove

the FOUO markings. Records in file or storage need not be retrieved solely for that purpose.

(j) *Disposal.* (1) Non-record copies of FOUO material (including hard copy reports and computer printouts) may be destroyed by tearing each copy into pieces to preclude reconstructing, and disposed in regular trash containers. When local circumstances or experience indicates that this destruction method is insufficient, local authorities may direct other methods while considering the additional expense balanced against the sensitivity of FOUO information in the records. FOUO information on unclassified magnetic storage media shall be disposed of by overwriting the media one time with any one character. Storage areas within an ADP system (internal memory, buffers, registers, and similar storage areas) may be cleared by using a hardware clear switch, a power-on reset cycle, or a program designated to overwrite the storage area.

(2) Record copies of FOUO documents shall be disposed of following the disposal standards established under SECNAVINST 5212.5C (Records Disposal Manual) for the particular kind of record.

(k) *Unauthorized disclosure.* The unauthorized disclosure of FOUO records does not constitute an unauthorized disclosure of Department of the Navy information classified for security purposes. However, appropriate administrative or disciplinary action shall be taken against those responsible. Unauthorized disclosure of FOUO information that is protected by the PA may result in civil and criminal sanctions against responsible person(s). The naval activity that originated the FOUO information shall be informed of its unauthorized disclosure.

[56 FR 66574, Dec. 24, 1991, as amended at 59 FR 29722, June 9, 1994]

§ 701.10 FOIA appeals/judicial actions.

(a) *How to file an appeal.* The following guidelines should be followed by individuals wishing to appeal a denial of information, a request for waiver/reduction of fees, or a “no record” response:

(1) The appeal must be received by the cognizant appellate authority (i.e.,

NJAG or OGC) within 60 days of the date of the response.

(2) The appeal letter must be in writing and requesters should provide a copy of the IDA’s response when filing a written appeal to the Navy’s appellate authorities (OGC or NJAG, depending on subject matter), regarding an IDA’s decision that a record is exempt in whole or in part or because a naval activity denied a request for a waiver/reduction of fees. The requester should include a copy of the denial letter and provide supporting rationale on why the appeal should be granted. The requester may appeal a “no records” response if he/she believes an adequate search of files was not conducted.

(b) *Time of receipt.* The time limits for responding to a FOIA appeal commence when the appeal reaches the office of the appellate authority having jurisdiction over the record. Misdirected appeals should be referred expeditiously to the proper appellate authority.

(c) *Appellate authorities.*—(1) *Responsibility and authority.* NJAG and OGC are authorized to adjudicate appeals made to the Secretary of the Navy (SECNAV) on denials of requests for copies of Department of the Navy records or portions thereof, or refusals to waive or reduce fees on matters within their respective areas of cognizance. That includes the authority to release or withhold records, or portions thereof, waive or reduce fees, and to act as required by SECNAV for appeals under 5 U.S.C. 552 and subparts A, B, C, and D of this part. NJAG and OGC are further authorized to delegate this authority to a designated Assistant NJAG and the Principal Deputy OGC or Deputy General Counsel (Logistics), respectively, under such terms and conditions as they may deem appropriate.

(2) *Respective areas of cognizance.* As delineated in SECNAV Instructions 5430.25D and 5430.27A (NOTAL), the respective areas of cognizance of NJAG and OGC for providing legal services for the Department of the Navy are:

(i) NJAG. In addition to military law, all matters except those falling under the cognizance of OGC.

(ii) OGC. Business and commercial law aspects of:

(A) Acquisition, custody, management, transportation, taxation, and