

SECURITY BRANCH, ARS

	TODAY'S DATE: 10 Feb 2003	ORIGINATOR	INITIAL
	SUBJECT: NOTICE OF POLICY CHANGES TO DON FOIA PROGRAM		
	NAME	DATE	INITIALS
CR	MR. WASHINGTON	2/19/03	<i>[Signature]</i>
C	MS. ROY		
C	MS. ROBEY		
C	MR. OLIVER		
C	MR. SIMMS	2/12/03	<i>[Signature]</i>
	MAJ HAUGHTON		
	MAJ HENSEN		
	CAPT HARPER		
C	GYSGT HOPEWELL	2/12/03	<i>[Signature]</i>
	SSGT BARRUS		
	SSGT HAMILTON		
	SSGT BAILEY		
	SGT BRADFORD		
	SGT WALKER		
	MS. HARRISON		
	MS. BROOKS		
O	MS. ROSS	2/10/03	<i>[Signature]</i>

See Chapter

- O-ORIGINATOR
- X-FOR SIGNATURE
- I-FYI
- R-RETURN
- C-CHOP
- COMMENTS:

*Mr Washington
has to sign.
DO A R/S TO WASH explaining the
situation. ~~Have the~~ Then have him
sign the TAB A r/s
Oliver*

1. The DoD and DON FOIA Policy Offices have recently notified this office of numerous policy changes to the DoD and DON FOIA Programs. At TAB A is an HQMC Route Sheet prepared to disseminate notice of the policy changes to Headquarters components. At TAB B is a memorandum prepared to disseminate notice of the policy changes to the major subordinate commands.
2. Request your concurrence on both TABs A and B. Please return for signature and dissemination.

ROUTINE



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
2 NAVY ANNEX
WASHINGTON, DC 20380-1775

IN REPLY REFER TO:

5720
ARSE/3U100263
19 Feb 03

From: Commandant of the Marine Corps
To: Distribution List

Subj: NOTICE OF POLICY CHANGES TO THE DEPARTMENT OF THE NAVY
(DON) FREEDOM OF INFORMATION ACT (FOIA) PROGRAM

Encl: (1) CNO ltr 5720 N09B10/3U507352 of 8 Jan 03
(2) CNO ltr 5720 N09B10/2U514304 of 20 Nov 02 (w/ encls)

1. Please ensure widest dissemination of this information.
2. The Director, Freedom of Information and Security Review (DFOISR), Office of the Secretary of Defense, has instructed that any DoD component receiving a FOIA request for copies of the intercepted communications referenced by Secretary Powell at the U.N. or for related material, should immediately refer the FOIA request to the Department of State. Any FOIA request seeking intercepted communications not specifically referenced or revealed by Secretary Powell should be referred directly to DFOISR. This procedure must be followed whether the component has responsive information or not. However, DFOISR asks that any component who receives such a request call Mr. Jim Hogan at (703) 697-5412 or DSN 227-5412 before referring the request or corresponding with the requester.
3. In a recent U.S. District Court, District of Columbia, FOIA lawsuit (Electronic Privacy Information Center (EPIC) v. DoD), Judge John Bates has ruled that EPIC qualifies for "news media" status. Based on this decision, it is recommended you handle all current and future EPIC FOIA requests as media requests. Formal FOIA policy on this issue is expected from DFOISR in the near future. Judge Bates' decision can be found at <http://www.dcd.uscourts.gov/02-1233.pdf>.
4. By Enclosure (1), the DON FOIA Policy Office apprises of the Congressional passage of the Intelligence Authorization Act for FY 2003, Public Law 107-306, which amends the (a)(3) provision of FOIA. The new language effectually now precludes any covered intelligence agency from disclosing records in response to FOIA requests from any foreign government or international government

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organization. FOIA policy guidance is expected from DFOISR within 30 to 60 days. In the interim, intelligence activities receiving such requests should contact this office for guidance.

5. Enclosure (1) also apprises of an implemented change to paragraph 14k of reference (a), which reflects that the Auditor General of the Navy is now the sole release/denial authority for Naval Audit Service reports. Accordingly, please ensure that all FOIA requests for Naval Audit Service reports are forwarded to the Auditor General of the Navy, Naval Audit Service, 1006 Beatty Place SE, Washington Navy Yard, DC 20374-5005, for processing.

6. By Enclosure (2), the DON FOIA Policy Office emphasizes the need to ensure that senior Navy/Marine Corps leadership is apprised of any FOIA request likely to receive media and/or congressional attention. Accordingly, in meeting this need, USMC activities receiving such requests are to immediately forward a copy of the request to the DON FOIA Policy Office by email at **NAVYFOIA@navy.mil** or by fax to (202) 685-6580. Your transmission should reference "ATTENTION FOIA" in the subject line to distinguish it from other email and faxes. Once received, the DON FOIA Policy Office will review the request and, if appropriate, disseminate to an established group of Navy/Marine Corps officials, along with other officials having a need to know. This dissemination will be accomplished by email using the subject line "ATTENTION FOIA."

7. The DFOISR has apprised this office that numerous Navy/Marine Corps activities have cited the Procurement Integrity Act (41 USC § 423) as an underlying statute for invoking exemption (b)(3) to withhold such documents as pre-award contractor bids/proposals, source selection information, etc. Since the Department of Justice (DOJ) has found 41 USC § 423 to be an invalid (b)(3) statute (see the May 2002 edition of the DOJ Freedom of Information Act Guide & Privacy Act Overview), USMC activities are to cease reliance on this statute for withholding pre-award and/or source selection documents.

8. All USMC FOIA Coordinators and action officers are reminded that FOIA requests seeking access to chemical, biological, radiological, and nuclear (CBRN) information require special handling. Please coordinate with this office immediately upon receipt of such a request. Additional information on this matter was .

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provided by the DON FOIA Policy Office in a May 2002 policy memorandum which can be found on the DON FOIA On-Line website at <http://foia.navy.mil/020520policymemo.pdf>.

9. Additionally, USMC FOIA Coordinators and action officers are reminded that a new FOIA fee schedule went into effect on 1 Jul 02 that impacts search and review fees (duplication fees remain unchanged). Clerical hours are now assessed at \$20.00 per hour, professional hours at \$44.00 per hour, and executive hours at \$75.00 per hour. You may download the new DD Form 2086 from the DON FOIA website at <http://foia.navy.mil/resources.html>.

10. Questions concerning any of these issues may be directed to me at (703) 614-4008 or emailed to me at rosstd@hqmc.usmc.mil.



TERESA D. ROSS

By direction

Distribution:

MARFORLANT NORFOLK VA
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II MEF CAMP LEJEUNE NC
III MEF OKINAWA JA
1ST MARDIV CAMP PENDLETON CA

2D MARDIV CAMP LEJEUNE NC
3D MARDIV OKINAWA JA
1ST FSSG CAMP PENDLETON CA
2D FSSG CAMP LEJEUNE CA
3D FSSG OKINAWA JA
1ST MAW OKINAWA JA
2D MAW MCAS CHERRY POINT NC
3D MAW MCAS MIRAMAR CA
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CG WRR SAN DIEGO
JLC MCAS CHERRY PONT NC
JLC MCAS MIRAMAR CA
DLC MCRD PARRIS ISLAND SC



DEPARTMENT OF THE NAVY
OFFICE OF THE CHIEF OF NAVAL OPERATIONS
2000 NAVY PENTAGON
WASHINGTON, D.C. 20350-2000

IN REPLY REFER TO

5720
Ser N09B10/3U507352
8 Jan 03

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.

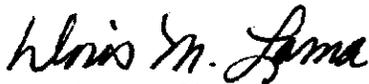
(4) When a disclosure of a final report containing undecided issues is made, the Auditor General shall notify the FOIA requester that the final report contains such undecided issues. In addition, the Auditor General will refer the request to the Naval IG for release to the requester of the IG addendum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


DORIS M. LAMA
By direction
(202) 685-6545/DSN 325-6545



**DEPARTMENT OF THE NAVY
OFFICE OF THE CHIEF OF NAVAL OPERATIONS
2000 NAVY PENTAGON
WASHINGTON, D.C. 20350-2000**

IN REPLY REFER TO

5720
Ser N09B10/2U514304
20 Nov 02

From: Chief of Naval Operations

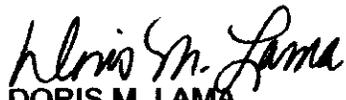
Subj: FREEDOM OF INFORMATION ACT (FOIA) POLICY LETTER

**Ref: (a) SECNAVINST 5720.42F, Department of the Navy FOIA Program
(b) SECNAVINST 5720.44A, Department of the Navy Public Affairs Policy
and Regulations**

Encl: (1) Sample listing of topics

1. This policy memo is being emailed to you. Please ensure widest dissemination. It will be posted at <http://foia.navy.mil> under Resource Materials.
2. While the Department of the Navy's (DON's) FOIA program is decentralized, there is a need to ensure that our senior Navy/Marine Corps leadership is apprised of any FOIA requests that are likely to receive media or congressional attention. Enclosure (1) contains a sample listing of topics that may result in media or congressional attention.
3. Upon receipt of a request that may receive media or congressional attention, DON activities shall:
 - a. Email a copy of that request to NAVYFOIA@navy.mil or fax it to CNO (N09B10) at 202-685-6580. Please place "ATTENTION FOIA" in the subject line to distinguish it from other emails; and,
 - b. If from the media, follow the guidance set forth in paragraph 14 to reference (a) and guidance prescribed in reference (b).
4. Once received, CNO (N09B10) will review the request and if appropriate disseminate it to an established group of senior Navy/Marine Corps officials along with other officials having an official need to know. This will be done via email using the subject line "ATTENTION FOIA."

5. This requirement is effective immediately and will be incorporated in reference (a) during the next rewrite. Please contact the undersigned with any questions you may have.



DORIS M. LAMA

By direction

(202) 685-6545/DSN 325-6545

Distribution
FOIA Email List 1

SAMPLE OF TOPICS THAT MAY REQUIRE HIGH-LEVEL NOTIFICATION

Cases that have major litigative impact

Homeland security

Hot issues (e.g., Guantanamo Bay detainees, accidents, Vieques, A-12, etc)

International incidents

Investigations (e.g., senior officials, major contractors, major programs, major fraud, theft of major government property, espionage, etc)

Major programs (e.g., weapons, BRAC, environment, homeporting, etc)

Senior officials (e.g., pay bonuses, ethics issues, etc)

Sweeping press inquiries that have Navy-wide interest

Major historical issues (e.g., Pearl Harbor detainees, etc)

Major personnel issues (e.g., military selection boards, women in the military, don't ask-don't tell policy; family advocacy; morale and welfare, etc)

Navy realignment issues

War on drugs

War on terrorism

White House/Vice President issues