



DEPARTMENT OF DEFENSE  
DIRECTORATE FOR FREEDOM OF INFORMATION AND SECURITY REVIEW  
1155 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1155

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03-CORR-019

MEMORANDUM FOR: SEE DISTRIBUTION

SUBJECT: FOIA Amended by Intelligence Authorization Bill

In the Intelligence Authorization Act for fiscal year 2003, Congress included a provision to amend the Freedom of Information Act (FOIA). The provision affects requests for information submitted by foreign governments by adding a new subparagraph:

“(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).”

On December 23, 2002, the United States Department of Justice Office of Information and Privacy (DOJ(OIP)) posted guidance concerning the amendment on their website. The DOJ(OIP) guidance is located on the Internet at <http://www.usdoj.gov/oip/foiapost/2002foiapost38.htm>.

Policy for the Department of Defense (DoD) concerning the implementation of the amendment to the FOIA is as follows:

- a. Affected components of the DoD are those that are part of, or contain “an element of” the “Intelligence Community,” as defined by the National Security Act of 1947, as amended. These DoD components are the National Security Agency; the Defense Intelligence Agency; the National Imagery and Mapping Agency; the National Reconnaissance Office; certain other reconnaissance offices within the DoD; the Intelligence elements of the Army, the Navy, the Air Force, and the Marine Corps; and “such other elements of any other department or agency as may be designated by the President, or designated jointly by the Director of Central Intelligence and the head of the department or agency concerned, as an element of the intelligence community.”



- b. All DoD components which fall under the definition of elements of the "Intelligence Community," are precluded from releasing records responsive to requests made by any foreign government or international government organization. Any such requests received by DoD elements of the Intelligence Community (IC) will not be staffed for search, and a denial response will be issued to the foreign government or international government organization making the request. As in any denial of information made under the FOIA, appeal or litigation rights, as applicable, shall be given to the requester.
- c. Any DoD element of the IC receiving a request from a person or organization which may be a representative of a foreign government or international government organization may require requesters to furnish information further identifying themselves or their organization to substantiate whether the request is made on behalf of a foreign government or international governmental organization. If, after receiving any justification submitted by the requester, the DoD element of the IC determines that the requester is acting as a representative of a foreign government or international governmental organization, the DoD element is precluded from releasing any responsive information. Appeal or litigation rights, as applicable, shall be given to the requester.
- d. DoD elements of the IC shall update their component FOIA regulations to reflect the new procedures, and submit any proposed changes to the Directorate for Freedom of Information & Security Review. Final changes to component FOIA regulations will be published in the Federal Register.
- e. For purposes of the DoD annual FOIA report, denials will be categorized as "Other," "Not a Proper FOIA Request."

  
H. V. McIntyre  
Director