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From: Chief of Naval Operations  
To: EMail Distribution List (FOIA)

Subj: AMENDMENT TO THE FREEDOM OF INFORMATION ACT (FOIA)

Ref: (a) SECNAVINST 5720.42F

1. The Intelligence Authorization Act of 2003 amended the Freedom of Information Act (FOIA) by adding the following new language under 5 U.S.C. 552(a)(3)(E):

"An agency, or part of an agency, that is an element of the intelligence community (as the 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. Both Departments of Justice and Defense have issued guidance regarding implementation of this amendment. Their guidance can be downloaded from <http://www.usdoj.gov/oip/foiapost/2002foiapost38.htm> and <http://www.defenselink.mil/pubs/foi/intelauthbill.pdf>, respectively.

3. DON implementation is as follows:

a. Only DON activities that meet the definition of "an element of the intelligence community (IC)" are affected.

b. Paragraph 6g of SECNAVINST 5000.34B, identifies the intelligence components of the Navy as: the Office of the Director of Naval Intelligence [CNO (N2)] within the Office of the Chief of Naval Operations; the Office of Naval Intelligence; Director, Marine Corps Intelligence Staff (CI); Marine

Corps Intelligence Activity (MCIA); the Naval Security Group Command; Marine Support Battalion; intelligence and counterintelligence elements of the U.S. Marine Corps; the counterintelligence elements of the Naval Criminal Investigative Service; Naval and Marine Corps Reserve Intelligence Programs; and other DON organizations, staffs, and offices when engaged in intelligence activities.

c. This amendment precludes DON IC activities from releasing records responsive to requests made by any foreign government or international government organization (IGO). Any such requests received by DON IC activities will not be staffed for search, and a denial response will be issued to the foreign government or IGO 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.

d. A DON IC activity receiving a request from a person or organization that may be a representative of a foreign government or IGO 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 IGO. If after receiving any justification submitted by the requester, the DON IC activity determines that the requester is acting as a representative of a foreign government or IGO, the DON IC activity is precluded from releasing any responsive information. Appeal or litigation rights, as applicable, shall be given to the requester.

e. DON IC activities that wish to determine if a particular organization is considered an IGO are encouraged to use the internet search engines to view the various web sites that list "international government organizations," such as <http://www.maxwell.af.mil/au/aul/wsites/int'l.htm>.

4. For the purposes of the Annual FOIA Report, denials to such requests will be categorized under "Other Reasons" as "Not a Proper FOIA Request."

5. This policy change will be posted at [www.foia.navy.mil](http://www.foia.navy.mil) under Resource Materials (FOIA

Policy) and incorporated into the next revision of reference (a).

6. Please ensure widest dissemination. Questions may be addressed to the undersigned.

By direction of the  
Chief of Naval Operations