

DOCUMENT RESUME

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RELEASED 3/2/78

Administrative Markings by Agencies Not Restricting GAO Access to Government Documents. LCD-78-109; B-39772. February 21, 1978. 3 pp.

Report to Rep. Richardson Preyer, Chairman, House Committee on Government Operations: Government Information and Individual Rights Subcommittee; by Elmer B. Staats, Comptroller General.

Issue Area: Federal Information: National Security Information (1904).

Contact: Logistics and Communications Div.

Budget Function: General Government: General Property and Records Management (804).

Organization Concerned: General Accounting Office.

Congressional Relevance: House Committee on Government Operations: Government Information and Individual Rights Subcommittee. Rep. Richardson Preyer.

Authority: F.P.R. 1-2.407-8. A.S.P.R. 2-407.8. Freedom of Information Act.

While most Federal agencies use administrative markings and other identification codes to restrict access to Government documents, a poll of GAO operating divisions did not reveal any specific instance where these markings restricted access to documents. This does not preclude the possibility that, in some instances, data were not made available because of a management decision not to release for review data bearing administrative markings. From time to time, GAO has experienced some problems in gaining access to information in various agencies; those restrictions were not related to administrative markings but to questions concerning authority for access to certain types of data. Under Bid Protest Procedures, access to documentation relevant to the issues raised in the protest and in the possession of the contracting agency may be restricted from the public by law, regulation, or administrative markings. The report GAO receives generally contains all pertinent material. Even if such information is not furnished with the report, GAO encounters little, if any, difficulty in securing it from the agency upon request. A protester may submit a request to the contracting agency under the Freedom of Information Act for material not included in its copy of the agency report. Administrative markings did not prevent the publication of material in the 1975-76 Congressional Sourcebook Series; agencies were told that availability statements could not limit access to data published in the Sourcebooks. (RRS)

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COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20548

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FEB 21 1978

RELEASED  
3/2/78

The Honorable Richardson Preyer, Chairman  
Government Information and Individual  
Rights Subcommittee  
Committee on Government Operations  
House of Representatives

Dear Mr. Chairman:

Your letter of December 14, 1977, requested any information we might have regarding the use by Federal agencies of administrative markings and other identification codes which restrict access to Government documents. You also asked if we had encountered difficulty in obtaining information restricted by administrative markings.

While most agencies encountered in the conduct of our reviews use administrative markings, a polling of our operating divisions has not revealed any specific instance where these markings restricted our access. This does not, of course, preclude the possibility that in some instances data was not made available to us because of a management decision not to release for our review data bearing administrative markings.

We have from time to time had problems in gaining access to information in various agencies; however, the restrictions were not related to administrative markings, but rather, questions concerning our authority to access certain types of agencies' data.

Following are examples where we have requested and obtained information with administrative markings.

In the context of our consideration of bid protests, pursuant to our Bid Protest Procedures, a contracting agency submits to our Office a detailed report on a protest filed here under a solicitation issued by that agency. The civilian and military procurement regulations prescribe the material to be included in the report (FPR § 1-2.407-8(a)(2); (ASPR § 2-407.8(a)(2)(1976 ed.)). Copies are sent to interested parties for their comments.

LCD-78-109

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However, access to some documentation relevant to the issues raised in the protest and in the possession of the contracting agency may be restricted from the public by law, regulation, or administrative markings, e.g., memoranda and legal opinions internal to the contracting agency, proposal evaluation data, and portions of proposals. The copies of the report furnished to the interested parties do not include that type of data, and so indicate. The report we receive, however, generally contains all pertinent material including, for our in camera inspection, otherwise restricted data. In addition, even if such information is not furnished with the report, we encounter little, if any, difficulty in securing it from the agency upon request.

We also note that a protester may submit a request to the contracting agency under the Freedom of Information Act for material not included in its copy of the agency report. We have no statistics showing how successful these requests are. In this connection, we have no authority under that act to determine what information must be disclosed by other Government agencies. Moreover, we will not make available information on a protest which has been submitted by interested parties or agencies to the extent that withholding of information is permitted or required by law or regulation. Where documents submitted by an agency include restrictive administrative markings, e.g., "For Navy Eyes Only," we honor such restriction.

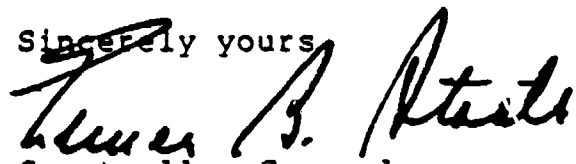
During our first data collection in 1975 for our Congressional Sourcebook Series, we asked agencies for systems catalogs, systems documentation, etc. Many of these kinds of documents were prepared for internal use and were not intended for publication. A few--in the range of 1 to 5 percent--were marked "draft" or "internal use only". Such markings did not prevent our publication of abstracts of these documents in the 1975-1976 Sourcebooks, nor did it inhibit our use of the data collection. In the latest edition of the Systems Sourcebook, a significant number of system outputs (printouts, special reports, etc.) are listed in the availability field as "internal use only," or limited to certain agencies (Office of Management and Budget, General Services Administration, and the General Accounting Office). However, in our conferences with agencies, we told them that such availability statements could not limit the Congress' or our access to data published in the Sourcebooks; we have not had difficulty obtaining data from these sources, nor have we heard from congressional users about data access problems.

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Regarding public requests under the Freedom of Information Act for documents that have administrative markings, we would assume that each request is reviewed by agencies on a case-by-case basis. It is our understanding that you have requested information from various agencies concerning their use of administrative markings which should be very helpful in determining whether such markings are restricting the public's access to Government information.

If we can be of further assistance, please let us know

Sincerely yours,



Thomas B. Starks  
Comptroller General  
of the United States