



ADMINISTRATION AND  
MANAGEMENT

OFFICE OF THE SECRETARY OF DEFENSE  
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WASHINGTON, DC 20301-1950

00 DEC 2008

MEMORANDUM FOR FREEDOM OF INFORMATION ACT (FOIA)  
PUBLIC LIAISONS

SUBJECT: 10 U.S.C. § 130c, Nondisclosure of Certain Sensitive Information of  
Foreign Governments and International Organizations

References: (a) Section 130c of title 10, United States Code  
(b) DoD 5400.7-R, "DoD Freedom of Information Act (FOIA) Program,"  
September 4, 1998

This memorandum provides critical guidance pertaining to changes to the DoD FOIA Program as necessitated by Reference (a). The content of this memorandum supplements Reference (b). This guidance is effective immediately and it will be incorporated into the new DoD 5400.07-M, which will replace Reference (b). Should you have any questions, please contact Mr. Jim Hogan (703) 588-6820.

Michael L. Rhodes  
Acting Director

Attachment:  
10 U.S.C. § 130c Guidance



## ATTACHMENT

### NONDISCLOSURE OF CERTAIN SENSITIVE INFORMATION OF FOREIGN GOVERNMENTS AND INTERNATIONAL ORGANIZATIONS

1. Section 130c of title 10, United States Code authorizes the withholding of unclassified sensitive information of a foreign government or international organization. Initial Denial Authorities within the Department of Defense shall withhold this information pursuant to Exemption 3 of the FOIA (5 U.S.C. § 552 (b)(3)) when they make all three of the following determinations concerning the requested foreign information:

a. The information was provided to the Department of Defense by or produced in cooperation with a foreign government or international organization.

b. The information is withheld from public disclosure by the foreign government or international organization (the foreign government or international organization should make this representation in writing).

c. Any of these three conditions are met:

(1) The foreign government or international organization requests in writing that the information be withheld.

(2) The foreign government or international organization provides the information to the USG on the condition that it is not released to the public.

(3) The requested information is specified in DoD issuances as being information the release of which would have an adverse effect on the ability of the Department of Defense to obtain the same or similar information in the future.

2. The coordination provisions of paragraphs 2.a. through 2.d. apply to FOIA requests for information originating with foreign governments or international organizations, such as the North Atlantic Treaty Organization, United Nations Commands, the North American Aerospace Defense Command (NORAD), the Inter-American Defense Board, or the International Committee of the Red Cross.

a. Coordination with foreign governments for the release of their information under the FOIA may be made through the Department of State, the specific foreign embassy, or any other coordination channel established by the DoD Component.

b. The Office of Freedom of Information (OFOI) established a coordination channel with the United Kingdom Ministry of Defence (UK MOD). If a DoD Component has

UK MOD-originated information within its files responsive to a FOIA request, the DoD Component shall forward the FOIA request and responsive information to OFOI, which shall coordinate with the UK MOD for release. OFOI will forward the UK MOD release recommendation to the DoD Component for direct response to the FOIA requester.

c. When a DoD Component locates NORAD documents in its files responsive to a FOIA request, they shall refer the request and documents to the U.S. Northern Command FOIA Requester Service Center, which will consult with NORAD.

d. Coordination with most international organizations may be made directly with those organizations.

3. If a foreign government or international organization asks the Department of Defense to withhold classified information originated by the international organization or foreign government, DoD shall withhold the information under the provisions of Exemption 1.

4. If a DoD Component is asked to withhold sensitive unclassified information originated by the foreign government or international organization, then the DoD Component shall withhold it under the provisions of Exemption 3 and shall reference the relevant statute as 10 U.S.C. § 130c. To qualify for withholding, the information must meet the limitations in paragraphs 4.a. and 5.b.

a. If the information came into USG possession or control prior to October 30, 2000, and more than 25 years prior to receipt of the FOIA request, the DoD Component shall notify the foreign government or international organization of the request for disclosure. The information then qualifies for withholding only if the foreign government or international organization requests in writing that the information not be disclosed for a specific period of time. This date can be extended with a later request by the foreign government or international organization.

b. If the information came into USG possession or control after October 30, 2000, the information cannot be withheld after the release date specified by the foreign government or international organization. In the case where one or more foreign governments or international organizations provided the information, the latest date specified by any of them will be used. If no release date was specified, and the information came into the possession of the DoD Component more than 10 years prior to receipt of the FOIA request, the procedures set forth in the previous paragraph apply.