**U.S. Department of Homeland Security**

**United States Coast Guard**

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COMDTNOTE 5260

JUN 13 2003

COMMANDANT NOTICE 5260

CANCELLED: JUN 13 2004

Subj: CH-4 TO THE COAST GUARD FREEDOM OF INFORMATION AND PRIVACY ACTS MANUAL, COMDTINST M5260.3

1. PURPOSE. This Notice promulgates changes to the subject Manual.

2. ACTION. Area and district commanders, commanders of maintenance and logistics commands, commanding officers of Headquarters units, assistant commandants for directorates, Chief Counsel, and special staff offices at Headquarters shall ensure the listed changes are incorporated into the subject Manual. Internet release authorized.

3. DIRECTIVES AFFECTED. None

4. DISCUSSION. CH-4 incorporates a federal regulation to augment existing authority for withholding, when requested via the FOIA, personally-identifying information regarding personnel assigned overseas, onboard ship, or to sensitive or routinely-deployable units. It also extends the scope of FOIA Exemption 6 to withhold personally-identifying information regarding all Coast Guard personnel.

   a. Chapter 5 discusses personally-identifying information that should be withheld when responding to a FOIA request for personnel lists.

   b. Chapter 8 introduces new statutory authority to withhold personally-identifying information of personnel assigned to units which are sensitive, routinely-deployable, or stationed in foreign territories. It also discusses the increased consideration that must be applied when releasing personally-identifying information of all other Coast Guard members.

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5. PROCEDURE.

a. Remove and insert the following pages.

| REMOVE PAGES | INSERT PAGES |
|---|---|
| 5-25 thru 5-27 | 5-25 thru 5-28 |
| 8-7 thru 8-19 | 8-7 thru 8-19 |

C. I. PEARSON
Director, Information and Technology

Encl: (1) CH-4 to The Coast Guard Freedom of Information and Privacy Acts Manual

This should be the normal response since errors in the findings of fact are frequently addressed and corrected by district or Commandant action, or advise the requester that the record will be released when final agency action has been taken. (This is permissible if the entire record will be "made promptly available" as required by statute. The delay should not exceed two months.)

(2) If the final action has occurred, provide the complete record, or withhold portions of the record citing the appropriate exemptions.

5. Merchant Seamen Records. Records concerning merchant seamen are in several categories.

a. Information from the file maintained on each merchant mariner's document is withheld under exemption 3 as required by 36 U.S.C. 7319.

b. Information from the files maintained on licenses and certificates of registry is normally released, except for the following personal information which is normally withheld under exemption 6 as a clearly unwarranted invasion of personal privacy:

(1) Birth date, SSN, method of obtaining citizenship, home address and telephone number.

(2) Civilian or military arrest and conviction record.

(3) Medical information.

c. Release information concerning suspension and revocation proceedings after a decision and order is issued by an administrative law judge or the case is closed, except for personally identifiable information (name of third party or witness, social security

number, date of birth, home address, merchant mariner number, etc.), which should be withheld under exemption 6 and/or 7(C). Deny access to record, pending final agency action citing the deliberative process privilege under exemption 5 until a decision is issued by an administrative law judge or the case is closed.

6. Enforcement of Laws and Treaties Program Records.

   a. Records compiled for enforcement of laws and treaties should normally be withheld if:

      (1) release is precluded by exemptions 1 or 3.

      (2) any of the exemptions of 7 are applicable.

   b. Individuals who provide information will normally be provided a copy of the information given, upon request.

   c. To the extent that information from law enforcement records has intentionally been made public by the Government (e.g., through press releases), the records are not withheld under a FOIA exemption.

7. Personnel Lists. Requests for lists of military or civilian personnel must be considered in **the following** areas:

   a. For personnel records stored in a computer database system, the issue of availability may depend on whether the system has an easily operable query capability. The Systems Manager chooses the option ONLY when the FOIA requester has either not specified the format or when the requested format is not feasible. The Coast Guard is not required to reprogram computers in order to produce records to fulfill a request. The format in which the list is provided (paper printout, magnetic tape) is the option of the database system manager.

b. As a spearhead agency for homeland security, the Coast Guard, like the other components of the Armed Forces, must maintain an appropriate security posture. Consequently, scrutiny must be applied in regard to the release of personally-identifying information in lists.

(1) You shall ordinarily withhold, under exemption 6, lists of names and lists of other personally-identifying information (including lists of e-mail addresses), of personnel currently assigned within the Coast Guard when subject to a request under the FOIA. These personnel include:

(a) active-duty military

(b) reservists

(c) civilian employees

(d) auxiliarists

(e) contractors

(f) military dependents

(g) naval personnel detached to the Coast Guard.

Apply the same standard to like personnel of the other components of the U.S. Armed Forces and DoD. If a particular request does not raise security or privacy concerns, names may be released as, for example, a list of attendees at a meeting held more than 25 years ago. Take particular care in reaching a decision to release a list of names in any electronic format.

(2) Release of duty addresses may especially be considered an invasion of privacy for personnel involved in law enforcement or intelligence activities due to threats of personal harm. (For

policies concerning the withholding of personally-identifying information of personnel stationed overseas, onboard ship, or to sensitive or routinely-deployable units, see section 8.A.6.c.(6) below.)

(3) Home addresses are routinely withheld under exemption 6 because privacy interests outweigh any general public interest in disclosure.

c. Attorney-client communications.

(1) Confidential communications between an attorney and a client relating to a legal matter for which the client has sought professional advice are protected by exemption 5. This privilege covers legal opinions and/or advice rendered by a government attorney or an attorney acting on behalf of the government and based on information communicated in confidence by the client. In this case the "client" is the Coast Guard, dealing with its attorneys, as would any private party seeking advice to protect personal interests.

(2) Unlike the attorney work-product privilege, the attorney-client privilege is not limited to the context of litigation.

d. Confidential commercial information.

(1) This privilege covers information which would be harmful to the government's bargaining position in commercial transactions or contract awards if released.

(2) The difference between the "commercial information" protected by this exemption and the material protected by exemption 4 is that in this case, the information (cost estimates, technical information, research results, realty appraisals, etc.) is generated by the government itself rather than an outside party. This protection expires upon the awarding of the contract or upon the withdrawal of the offer.

e. Safety Investigations

(1) Limited distribution safety investigations, conducted solely to reduce recurrence of mishaps and used only in that context, are afforded additional protection under exemption 5.

(1) When a safety investigator/board deems it necessary to afford confidentiality to uncover facts and circumstances pertaining to a mishap involving a military vessel (aircraft/boat/ship), the statement itself and evaluative facts gleaned from it are exempt from disclosure.

(3) Commandant (G-WKS) or (G-LRA) should be contacted regarding application of this privilege.

5. Personal Privacy. Exemption 6 relates to personnel, medical, and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. This exemption cannot be invoked to withhold from a requester information pertaining only to him/herself.

a. **As a spearhead agency for homeland security, the Coast Guard, like the other components of the Armed Forces, must maintain an appropriate security posture. Consequently, scrutiny must be applied in regard to the release of names and other personally-identifying information.**

b. Any of the following personnel, medical, or similar records are within the statutory exemption if disclosure would result in a clearly unwarranted invasion of personal privacy:

(1) Personnel and background records personal to any member or employee of the Coast Guard or other person, including that person's home address.

(2) Medical histories and medical records concerning individuals, including applicants for licenses.

(3) Any other detailed record containing personal information identified with a particular person.

b. The use of exemption 6 requires a balancing of the public's right to disclosure against the individual's right to privacy. If a privacy interest is found to exist in the material requested, the public interest in disclosure must be weighed against the privacy interest in nondisclosure. The following guidelines should be used in making the determination:

(1) It is possible for substantial privacy interests to exist in personal information even though the information has been made available to the general public at some place and point in time.

(2) The identity of a FOIA requester cannot be taken into consideration in determining what should be released.

(3) The requester's particular purpose, circumstances or proposed use of the material should not be considered in determining what should be released. Such determinations depend on the nature of the material and its relationship to the public interest in general.

(4) The "public interest" to be **considered** in the balancing process is limited to the public interest for which Congress enacted the FOIA, i.e., to shed light on the agency's performance of its statutory duties.

(5) Certain types of information may be protected categorically without regard to individual circumstances. (See c. below.)

**(6) Verification of status of named individuals: You may determine that release of personally-identifying information about an individual is appropriate only if the release would not raise security or privacy concerns and has been routinely released to the public.**

**(7) Ordinarily, names of Coast Guard personnel, other than lists of names, mentioned in records that are releasable under the FOIA should not be withheld; but in special circumstances where the release of a particular name would raise substantial security or privacy concerns, such a name may be withheld.**

**(8) This policy does not preclude discretionary release of names and duty information of personnel who, by the nature of their position and duties, frequently interact with the public, such as flag officers, public affairs officers, and other personnel designated as official command spokespersons.**

c. Information normally protected by this exemption includes, but is not limited to:

(1) Home addresses and home telephone numbers of individuals. [Note that home addresses may be provided by the Parent Locator Service of the Department of Health and Human Services under 42 U.S.C. 653. Requesters who are obviously attempting to obtain an address in order to obtain child support should be advised to seek assistance from their state child support enforcement service.]

(2) Social Security numbers; Merchant Mariner's license numbers.

(3) Evaluations of military or civilian employees.

(4) The existence or nonexistence of records concerning alcohol or drug treatment or counseling.

(5) Personal information about family or dependents.

(6) **Personally-identifying information** of military and civilian personnel assigned to units which are sensitive, routinely-deployable, or located outside of the United States and its territories. **In addition to citing FOIA Exemption 6 to withhold this information, also cite FOIA Exemption 3 to invoke 10 U.S.C. 130b. Refer to section 8-3 of this Manual for guidance on the application of Exemption 3 statutes.** The following applies:

(a) **Among the "personally-identifying information" that would be withheld are the person's name, rank, duty address, and official title and information regarding the person's pay.**

(b) Routinely-deployable units normally deploy from permanent home station on a periodic or rotating basis to meet peacetime operational requirements, or to participate in scheduled training exercises, which require deployment on a routine basis (vessels, strike teams, mobile aerostat programs, law enforcement detachments and training teams).

(c) Units normally qualifying under this definition that change status for an extended period of time, such as those vessels undergoing extensive maintenance activities over 90 days, would not qualify for the duration of the period.

(d) Units designated for deployment on contingency plans not yet executed, and units that participate in deployment on an infrequent basis (e.g., annual or semiannual) would not fall within this definition. However, units which are alerted for deployment during actual

execution of a contingency plan, or in support of a crisis operation would qualify.

(e) The following OPFACs are exempt based on the above criteria:

| OPFAC (1st 3 Digits) | UNIT CLASS/TYPE | OPFAC (1st 3 Digits) | UNIT CLASS/TYPE |
|---|---|---|---|
| 114 | WHEC | 164/166 | WLI |
| 115 | WMEC | 191 | WLR |
| 141 | WAGB | 183 | WIX |
| 145 | WAGB | 202 | A/S Washington |
| 121 | WMEC | 343 | Strike Teams |
| 175 | WTGB | | and Tac Law Enf |
| 122/123/125 | WMEC | | Teams |
| 131/132/133/134 | WPB | | |
| 152 | WLB | 641 | Trng Teams |
| 153/154/155 | WLM | 651 | ATC Mobile |
| 163/169/170 | WLI/WLIC | | (POPDIV) |

(7) Sensitive Units:

(a) Units primarily involved in training for or the conduct of law enforcement, clandestine, or classified missions, including units involved in collecting, handling, disposing, or storing of classified information and materials (patrol boat squadron staffs, MDZ/LLTCINC liaison officers, intelligence coordination center, C3I centers, and communications stations).

(b) Also included are units engaged in training or advising foreign personnel and units attached to DOD forces treated as "Sensitive Units" under DOD policies.

(c) The following OPFACs are exempt based on the above criteria:

| OPFAC (1st 3 Digits) | UNIT CLASS/TYPE |
|---|---|
| 134/135 | SES - WPB |
| 201 | A/S Clearwater |
| 201 | A/S Miami |
| 322 | LESUP |
| 344 | ICC and DET |
| 523 | OCC |
| 322/324 | Comm Sta |
| 478 | Squadron/Div of Patrol Boats |
| 66* | MDZ/FLTCINC |
| 711 | CCGD 7 (oi) (MARINCEN) |
| 751 | LANTAREA (AI) |
| 751 | PACAREA (PI) |

(8) Personal financial information as protected by the Right to Financial Privacy Act, 12 U.S.C. 3401, et seq.

d. Information normally not protected by this exemption includes, but is not limited to:

(1) For government civilian employees and military:

(a) Past duty stations.

(b) The qualifications of the successful applicant for a civilian position.

(2) Personal information concerning deceased persons, except for particularly sensitive information which may be withheld to protect the privacy interests of surviving family members.

(3) The home address of the owner of a documented vessel. [46 U.S.C. 12119]

(4) Information concerning civil penalty action, including a letter of warning issued by the district commander or other official. This information may generally be protected, if necessary,

until a letter of warning is issued or the matter is referred to a hearing officer.

(5) Information submitted by applicants for licenses which establish that they have the experience, education, or training required by Coast Guard regulations to obtain the license.

(6) Information on a Report of Marine Accident, Injury or Death, CG-2692, other than personally identifiable information (name of a third party or witness, social security number, date of birth, home address, merchant mariner number, etc.).

(7) The address of Coast Guard quarters, without the names of the occupants.

7. Records or Information Compiled for Law Enforcement Purposes. Exemption 7 relates to files compiled for law enforcement purposes by the Coast Guard or any other federal, state, or local agency, including those files compiled for the enforcement of civil or administrative regulations. This exemption applies only to the extent that the production of such law enforcement records or information:

a. Could reasonably be expected to interfere with enforcement proceedings, exemption 7(A). Determining the applicability of this exemption requires a two-step analysis focusing on:

(1) whether a law enforcement proceeding is pending or prospective; and

(2) whether release of information about it could reasonably be expected to cause some distinct harm. [See section on Law Enforcement "Exclusion" below.]

b. Would deprive a person of a right to a fair trial or an impartial adjudication, exemption 7(B).

c. Could reasonably be expected to constitute an unwarranted invasion of personal privacy, exemption 7(C).

(1) This exemption, like exemption 6, requires a balancing of the relevant personal privacy and general public interests concerning personal information in law enforcement records.

(2) This exemption is routinely invoked to withhold the identities of federal, state and local law enforcement personnel referenced in investigatory files, as public identification of these individuals could conceivably subject them to harassment and annoyance in the conduct of their official duties and in their private lives. It may also be used to protect the identities of individuals who provide information to law enforcement officials.

(3) Law enforcement records are unique in that the mere fact that an individual has been investigated by a law enforcement agency carries a stigmatizing connotation. Revealing the fact that investigatory files exist can in itself invade an individual's privacy. For this reason, the Coast Guard should use the "Glomar" response (See this chapter, section A-1-b-(1)) for such requests, refusing to confirm or deny the existence of the records requested, citing exemption 7(C), except in the following situations:

(a) confirmation of death of the subject;

(b) written waiver of privacy rights furnished by the subject of the investigation;

(c) if there is evidence that the existence of such files is general public knowledge. (NOTE: The fact

that the government has made such files public through indicting and prosecuting the individual at some time in the past does not necessarily extinguish all privacy concerns of the individual.)

(d) if there is a determination that the disclosure of such information is in the general public interest. (Note: Disclosure of corruption and significant intentional misconduct by high public interest.)

(4) It is important to be consistent in the practice of refusing to confirm or deny the existence of law enforcement records in order to make its use effective. If the agency provides a "no records" response to the first nine requests for investigatory files when a search reveals no records, it could not respond to the tenth request, where records in fact do exist, by "refusing to confirm or deny" without in effect disclosing the very fact sought to be protected.

d. Could reasonably be expected to disclose the identity of a confidential source, including a state, local or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, exemption 7(D).

(1) This exemption may be used to protect the identity of crime victims, citizens providing unsolicited allegations of misconduct, citizens who respond to inquiries from law enforcement officials, and commercial or financial institutions, as well as criminal informants.

(2) There must be evidence that the information was provided in confidence or in trust, with the assurance that it would not be disclosed to others.

e. Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, exemption 7(E).

(1) This exemption may be used to withhold such records as law enforcement manuals which contain techniques and procedures used by the Coast Guard in law enforcement activities.

(2) The material must meet the general requirement that the technique or procedure not be already well known to the general public.

f. Could reasonably be expected to endanger the life or physical safety of any individual, exemption 7(F).

8. Law Enforcement Exclusion. The Freedom of Information Reform Act of 1986 created an entirely new mechanism for protecting certain especially sensitive law enforcement records under subsection (c) of the FOIA. This subsection authorizes Federal law enforcement agencies to treat such records as not subject to the requirements of the FOIA, i.e., to lawfully respond to a requester that no records responsive to the request exist.

a. Processing of Requests. Use of an exclusion described in this section requires approval of the General Counsel for the Department of Transportation.

b. The command processing the request shall:

(1) Prepare a document identifying the records for which the exclusion is being invoked and the basis for the exclusion. This document is to be signed by the official recommending use of the exclusion.

(2) Mail a copy of the records and signed supporting document to Commandant (G-LRA) with a copy to Comdt(G-CIM-2).

c. Commandant (G-LRA) will coordinate the decision on use of the exclusion with the General Counsel for the Department of Transportation.

d. Two provisions of 5 U.S.C. 552(c) apply to the Coast Guard:

(1) Whenever a request is made which involves access to records or information compiled for law enforcement purposes; and,

(a) The investigation or proceeding involves a possible violation of criminal law; and,

(b) There is reason to believe that:

1 The subject of the investigation or proceeding is not aware of its pendency; and

2 Disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings; then,

(2) The Coast Guard may, during only such time as the above circumstances continue, treat the records as not subject to the requirements of the FOIA.

e. Whenever informant records maintained by the Coast Guard under an informant's name or personal identifier are requested by a third party according to the informant's name or personal identifier, the Coast Guard may treat the records as not subject to the requirements of the FOIA unless the informant's status as an informant has been officially confirmed.

9. Records Relating to Supervision of Financial Institutions. Exemption 8 relates to any material contained in or related to any examination, operating or condition report prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of a financial institution. This exemption is not used by the Coast Guard.

10. Geological or Geophysical Information. Exemption 9 relates to any geological or geophysical information and data concerning wells. This exemption is not used by the Coast Guard.

B. Other Sources. For additional information pertaining to exemptions see the following documents: The Freedom of Information Act, 5 U.S.C. 552; The Privacy Act of 1974, 5 U.S.C. 552a; The Government in the Sunshine Act, 5 U.S.C. 552b; Office of Management and Budget Circular Number A-130, dated July 25, 1994 [49 C.F.R. Part 7 and 49 C.F.R. Part 10].