



Department of Defense INSTRUCTION

NUMBER 7650.01

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Incorporating Change 1, August 24, 2011

USD(C)

SUBJECT: Government Accountability Office (GAO) and Comptroller General Requests for Access to Records

References: See Enclosure 1

1. PURPOSE. This Instruction:

a. Reissues DoD Directive 7650.1 (Reference (a)) as a DoD Instruction in accordance with the authority in DoD Directive 5118.03 (Reference (b)), and incorporates and cancels DoD Instruction 7650.4 (Reference (c)).

b. Implements policy, assigns responsibilities, and prescribes procedures for responding to GAO requests for records on announced surveys and reviews.

2. APPLICABILITY. This Instruction applies to OSD, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense (IG DoD), the Defense Agencies, the DoD Field Activities, and all other organizational entities within the Department of Defense (hereafter referred to collectively as the "DoD Components").

3. DEFINITIONS. See Glossary.


4. POLICY. It is DoD policy that the DoD Components cooperate with the GAO and respond quickly, and as completely as practicable, to GAO requests for records related to announced surveys or reviews, and allow the GAO full access to all records that are not exempt from disclosure to the GAO.

5. RESPONSIBILITIES. See Enclosure 2.

6. PROCEDURES. See Enclosure 3.

7. RELEASABILITY. UNLIMITED. This Instruction is approved for public release and is available on the Internet from the DoD Issuances Website at <http://www.dtic.mil/whs/directives>.

8. EFFECTIVE DATE: This Instruction is effective immediately.



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Enclosures

1. References
 2. Responsibilities
 3. Procedures
- Glossary

ENCLOSURE 1

REFERENCES

- (a) DoD Directive 7650.1, "General Accounting Office (GAO) and Comptroller General Access to Records," September 11, 1997 (hereby canceled)
- (b) DoD Directive 5118.03, "Under Secretary of Defense (Comptroller) (USD(C))/Chief Financial Officer (CFO), Department of Defense," January 6, 1997
- (c) DoD Instruction 7650.4, "Procedures for Responding to General Accounting Office (GAO) and Comptroller General Requests for Access to Records," September 9, 1997 (hereby canceled)
- (d) DoD Instruction 7650.02, "Government Accountability Office (GAO) Reviews and Reports," November 20, 2006
- (e) Sections 716, 3524, and 3526 of title 31, United States Code
- (f) Office of Management and Budget (OMB) Circular A-11, "Preparation, Submission, and Execution of the Budget," ~~June 2008~~ August 2011¹
- (g) Section 552 of title 5, United States Code
- (h) Under Secretary of Defense for Policy Memorandum, "Granting Congress and the Government Accountability Office Access to Civil Support Plans," January 12, 2010²*
- (hi) DoD Directive 5400.07, "DoD Freedom of Information Act (FOIA) Program," January 2, 2008*

¹ OMB Circular A-11 can be found on http://www.whitehouse.gov/omb/circulars_a11_current_year_a11_toc

² Available through the Office of the Under Secretary of Defense for Policy.

ENCLOSURE 2

RESPONSIBILITIES

1. UNDER SECRETARY OF DEFENSE (COMPTROLLER) (USD(C))/CHIEF FINANCIAL OFFICER (CFO). The USD(C)/CFO, in addition to the responsibilities in paragraph 3 of this enclosure, shall establish and supervise the execution of all policies and procedures for responding to GAO requests for access to records, including access to budgetary material, in accordance with this Instruction.

2. IG DoD. The IG DoD, in addition to the responsibilities in paragraph 3 of this enclosure, shall:

a. Be the principal point of contact between the Department of Defense and the GAO in accordance with the provisions of DoD Instruction 7650.02 (Reference (d)).

b. Provide advice and assistance in connection with GAO and Comptroller General requests for records, and work with DoD Component liaison officials concerning access requests from the GAO and meetings between the Department of Defense and GAO personnel concerning such access requests.

3. HEADS OF THE DoD COMPONENTS. The Heads of the DoD Components shall:

a. Implement the requirements of this Instruction.

b. Ensure that any contemplated denial of access to records by the Component, or a request for an exemption to a disclosure requirement under section 716(d) (1)(C) of title 31, United States Code (Reference (e)), is timely, accurate, and completely explained, and that it is reviewed and coordinated with the chief legal officer of the DoD Component.

c. Make exemption determinations concerning records related to activities that the President has designated as intelligence or counterintelligence activities or are otherwise exempt from disclosure under the provisions of section 716(d)(1)(B) of Reference (e).

d. Inform the GAO that a record is subject to special handling requirements under Reference (e) when a record being released contains personal information, the disclosure of which could constitute an unwarranted invasion of privacy and, therefore, must be kept in a way that prevents unwarranted invasions of personal privacy.

ENCLOSURE 3

PROCEDURES

1. RECORDS THAT REQUIRE SPECIAL TREATMENT

a. Budgetary Material. Office of Management and Budget (OMB) Circular A-11 (Reference (f)) establishes Executive Branch policy on the release of budgetary material, and it should be consulted for guidance whenever a request for budgetary material is received. All responses to requests for budgetary material shall be processed through Comptroller channels and shall be coordinated with the Office of the USD(C) (OUSD(C)).

b. Internal Audit Reports. Such requests shall be referred to the appropriate DoD audit liaison official. When an access request involves final audit reports issued by a DoD Component's internal audit organization, the report and any associated working papers shall be furnished to the GAO upon request. Supplementary materials on such reports and their findings and recommendations, such as management positions on the audit report and any corrective action being taken, shall be furnished either concurrently with the audit report or as soon as practicable thereafter.

c. Records of a DoD Component Other than the DoD Component Receiving an Access Request. When an access request is submitted to one DoD Component but involves a record of another DoD Component, the request should immediately be referred to that Component for either a direct response to the GAO or for approval of the release of the record. The GAO shall be advised of such referrals. If a request involves a Future Years Defense Program or Program Budget Decisions, the GAO should be requested to seek the information directly from the OUSD(C). If a request involves technical development plans, the GAO should be referred directly to the originating office. If a request is for a record concerning operation plans or support plans involving joint Service participation, the GAO should be referred directly to the Chairman of the Joint Chiefs of Staff.

d. Records of a Non-DoD Entity. When an access request involves a record of a non-DoD entity, the responsibility for determining the release of that record rests with the non-DoD entity. If a request involves such a record, the GAO should be advised of this fact and asked to request the record directly from the non-DoD entity. Alternatively, such a record may be released by a DoD Component with the consent of the originating entity.

e. Records Containing Personal Information. Under the provisions of section 716(e)(2) of Reference (e), any record described in section 552(b)(6) of title 5, United States Code (Reference (g)) consisting of personnel and medical files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, must be kept by the Comptroller General in a way that prevents unwarranted invasions of personal privacy. Accordingly, any time that such a record is furnished to a GAO representative or to the Comptroller General, the record shall be suitably marked to indicate that it is a personnel or medical record that is subject to the protection provisions of section 716(e)(2) of Reference (e).

f. Foreign Intelligence and Counter Intelligence Information. Although the Comptroller General may be prevented from compelling access to this information, such information should not be denied categorically. Such information may be furnished to GAO representatives having a legitimate need to know. Therefore, denials of access to such information must be carefully considered and supported legitimately.

~~g. Operational Plans and Future Military Operations. The Department limits access to operational plans and information about potential future military operations, such as execution orders, to individuals having a mission-critical role in the production, review, or execution of those plans or operations. The GAO typically does not have such a mission-critical role and will normally not be granted access to operational plans or to information about potential future military operations. Exceptions to this policy should be requested through the Joint Staff and approved by the Under Secretary of Defense for Policy.~~

g. Operational Plans and Future Military Operations. Generally, the Department of Defense limits access to operational plans and information about potential future military operations, such as execute orders, to individuals having a mission-critical role in the production, review, or execution of those plans or operations. However, in the course of conducting investigations, GAO is entitled to receive information required for its ongoing reviews, consistent with other provisions of this Instruction and the Department's obligation to protect Presidential decision making. By law, GAO is required to treat such information with the same level of confidentiality as the Secretary of Defense. Civil support plan information up to the classification of SECRET normally may be shared with the GAO under controlled circumstances as directed by the Under Secretary of Defense for Policy (USD(P)) Memorandum (Reference (h)). Where GAO requests access to operational plans not categorized as civil support plans, or about civil support plans that may be classified above SECRET, and information about potential future military operations, DoD Components should forward these requests through the Joint Staff for consideration by the Office of the USD(P), which shall consult with GAO and determine whether to grant the request within 21 days of initial receipt of GAO's request. In the event the request is denied, in whole or in part, GAO may appeal the denial to the USD(P), who shall consult with GAO and act on the appeal within 14 days of receipt. If the appeal is denied, the USD(P) shall inform GAO of the basis for the denial. If there are questions about the applicability of this paragraph, contact the Deputy Assistant Secretary of Defense for Plans.

2. RESPONDING TO AN ACCESS REQUEST

a. All relationships with the GAO, including relationships involving access to records, are subject to the provisions of this Instruction. Under the provisions of this Instruction, the Office of the IG DoD (OIG DoD) is the primary liaison for all matters concerning the relationships between the Comptroller General, GAO, and Department of Defense. Therefore, if an access request has been received and it is not apparent that the OIG DoD has been notified, the OIG DoD shall be immediately informed about the access request.

b. Most access requests can be handled informally and should be accommodated at the lowest possible organizational level. If any delays are encountered in the course of processing an access request, the GAO shall be informed of the status of the request including, when appropriate, the reason for the delay.

c. In responding to an access request, every effort should be made to satisfy the request to the maximum extent feasible. This includes developing mutually acceptable alternatives to providing physical copies of requested documents if they are voluminous, extremely sensitive, highly classified, or their physical production and transmittal to the GAO otherwise is impractical or unwarranted because of security, personal privacy, or other legitimate reasons that might exist for limiting the dissemination of records.

d. If a record being furnished is incomplete or subject to misinterpretation, clarifying information or remarks may be furnished to accompany the record so that the GAO will be in a better position to present a complete and accurate analysis or discussion of the matter being reviewed. The provision of such information or remarks, however, should not delay the release of the requested record.

e. If an access request involves several different records, some of which are releasable and some of which may be exempt, prompt action must be taken to provide access to the releasable documents and to resolve the issues related to records that may be exempt.

f. If it is determined that an access request involves a potentially exempt record, access may be denied pending resolution of whether an exemption applies to the record and whether a valid reason exists for denying access to the record. Immediately upon a determination that an exempt record may be involved in an access request, legal counsel, up to and including the General Counsel of the Department of Defense (GC, DoD), if necessary, shall be consulted to determine whether any criterion exists to establish a record as exempt. Every effort should be made to resolve any legal issue involving a potentially exempt record at the lowest possible level.

g. If it is determined that the record is not exempt, it should be released to the GAO.

h. If the DoD Component initially determined that the record is exempt, the GAO shall be so advised. If the record falls within one of the two statutory Freedom of Information Act exemptions referred to in section 716(d)(1)(C) of Reference (f), before advising GAO that the record is exempt, an appropriate policy-making official shall also make the additional determination required with respect to that record that its disclosure "could reasonably be expected to impair substantially the operations of the government."

i. Detailed records shall be kept on all actions taken about denials of exempt records.

j. When a record is withheld on the basis that it is exempt, every effort shall be made to accommodate GAO's need for information through mutually acceptable alternative means so that a situation resulting in a written Comptroller General request can be avoided.

k. In all cases involving a final denial of an access request, action shall be taken to advise the Secretary of Defense, or the Secretary of the Military Department concerned, of the denial and the reason for the denial. Such notifications shall be coordinated with the GC, DoD, and the General Counsel of the Military Department concerned.

3. RESPONDING TO WRITTEN COMPTROLLER GENERAL REQUESTS

a. When a written request to the Secretary of Defense or the Secretary of a Military Department is received from the Comptroller General, it will be referred immediately to the appropriate DoD Component and office within that Component that is responsible for the record being requested. In addition, the GC, DoD; the General Counsel of a Military Department, in the case of a Military Department's record; and the Director, Report Followup and GAO Liaison, OIG DoD shall be advised of the receipt of the request, and a copy of the request will be furnished to each office.

b. Suspense dates shall be established so that the 20-day response time specified in section 716 of Reference (f) will be met. Detailed records shall be kept of all actions taken in response to a written Comptroller General request for use in case the Comptroller General should seek to enforce a claimed right to access under the provisions of section 716 of Reference (e).

c. Immediate action shall be taken to obtain a review by the Secretary of Defense or the Secretary of a Military Department of all prior DoD Component decisions to deny any access request(s) on the record involved. If that review results in a determination that the record should be released, the record shall be furnished to the Comptroller General. If it is determined that the record still should not be released, an effort will be made to determine whether it is possible to resolve the matter by using alternative means to satisfy the Comptroller General's request.

d. If a record is released after its denial is reconsidered, the Secretary of Defense or the Secretary of a Military Department will notify the Comptroller General that the record has been released and that no further action is contemplated. If a record is not released, but there has been an agreement on alternative means to satisfy the Comptroller General's request, this fact shall be confirmed in writing to the Comptroller General along with an indication that any later written Comptroller General request for the record itself will be considered to be a new request that will be governed by a new 20-day response time. Copies of this letter shall be furnished promptly to all offices notified of the initial request.

e. If a determination is made that the record should still not be released after its denial is reconsidered, a letter shall be prepared for the Secretary of Defense or the Secretary of a Military Department, as appropriate, that advises the Comptroller General that the record will still be withheld. This letter shall specify the precise statutory basis for withholding the record and, if the record is one covered by either of the two Freedom of Information Act exemptions referred to in section 716(d)(1)(C) of Reference (e), it also shall contain a determination that the release of the record could be expected to impair substantially the operations of the Government.

f. A letter denying a written Comptroller General request shall be coordinated with the GC, DoD, in all cases and with the General Counsel of the Military Department concerned, if the record is a record of a Military Department.

g. When there is a written Comptroller General request involving a record covered by one of the two Freedom of Information Act exemptions referred to in section 716(d)(1)(C) of Reference (e), a request for a certification by the President or the Director, OMB, shall be processed contemporaneously with the processing of the denial of the written Comptroller General request. Such processing is necessary because of the short time period for obtaining such a certification should the Comptroller General file a report following the denial of a written request.

4. **PRESIDENTIAL OR DIRECTOR, OMB, CERTIFICATIONS.** If a written Comptroller General request is not approved, the Comptroller General may file a Comptroller General Report. If a record covered by one of the two Freedom of Information Act exemptions referred to in section 716(d)(1)(C) of Reference (e) is involved, it will be an exempt record only if the President or the Director, OMB, makes the certification required by that reference within 20 days after the report is filed. Accordingly, when a written Comptroller General request involving such a record is not approved, the following shall apply:

a. In all but the most extraordinary circumstances, a certification shall be prepared for the signature of the Director, OMB, stating that the release of a record covered by one of the two Freedom of Information Act exemptions referred to in section 716(d)(1)(C) of Reference (e) could reasonably be expected to impair substantially the operations of the government. It shall be prepared by the same office that prepared the denial of the written Comptroller General request.

b. The certification shall be supported with all pertinent information necessary to justify:

(1) The basis for the record falling within the applicable Freedom of Information Act exemption according to DoDD 5400.07 (Reference (hi)); and

(2) The conclusion that the disclosure of the record reasonably could be expected to impair substantially the operation of the government. A copy of the record that has been denied shall accompany the certification unless its volume or sensitivity prevents such action. If the record cannot accompany the certification, arrangements shall be made for OMB review of the record. In addition, the material forwarded shall also provide an option for the President or the Director, OMB, to direct an alternative resolution of the access issue, including release of the record in question.

c. A certification request shall be coordinated with the GC, DoD, in all cases and with the General Counsel of the Military Department concerned, if the record is a record of a Military Department.

d. All certification requests shall be transmitted to the President or the Director, OMB, by the Secretary of Defense.

e. If the President or the Director, OMB, decides that a certification should not be made and that the record should be furnished to the Comptroller General, the materials shall be provided to the Comptroller General.

5. RESPONDING TO COMPTROLLER GENERAL REPORTS

a. Whenever a Comptroller General report is filed, the DoD Component whose records are the subject of the report will review it to determine whether a Presidential or OMB certification was required because the record is covered by one of the two Freedom of Information Act exemptions referred to in section 716(d)(1)(C) of Reference (e). If the required actions have not been taken, immediate action shall be taken to obtain a Presidential or Director, OMB, certification.

b. Any Comptroller General report filed with the Secretary of Defense or the Secretary of a Military Department shall be referred immediately to the GC, DoD; the General Counsel of the Military Department concerned, if the report concerns the record of a Military Department; and to the office having primary responsibility for the record that has been denied.

c. The office having primary responsibility for the record that has been denied shall prepare immediately a complete report on all of the facts and circumstances surrounding the denial of access to the record.

d. The report shall include:

(1) A copy of the record itself or a detailed summary of the record if its volume or sensitivity prevents inclusion of the actual record;

(2) The basis for its denial and all relevant information about the denial of the record;

(3) All actions taken to afford the Comptroller General access to the information that has been sought about the record, including all attempts to accommodate the needs of the GAO or the Comptroller General for information through alternatives to furnishing the record;

(4) All actions taken, and information used, in response to the written Comptroller General request that preceded the filing of the report, including all information that was provided to the Secretary of Defense or the Secretary of the Military Department concerned in connection with the reevaluation of prior denials following the receipt of the written Comptroller General request, and any additional information that was used in denying the written Comptroller General request; and,

(5) The response that was transmitted to the Comptroller General in response to the written Comptroller General request.

e. In addition, if the report involves a record for which a certification was sought from the President or the Director, OMB, and the certification has been made, it shall be included with the report. If the certification has not been made, the Director, OMB, shall be requested immediately for the certification so that it may be made by the 20th day after the filing of the Comptroller General report.

f. Both the report and any Presidential or Director, OMB, certification shall be transmitted to the Secretary of Defense, through the GC, DoD, who shall determine whether it is necessary or appropriate to transmit the report to the President; the Director, OMB; the Attorney General; or to the Congress.

GLOSSARY

PART I. ABBREVIATIONS AND ACRONYMS

CFO	Chief Financial Officer
GAO	Government Accountability Office
GC, DoD	General Counsel of the Department of Defense
IG DoD	Inspector General of the Department of Defense
OIG DoD	Office of the Inspector General of the Department of Defense
OMB	Office of Management and Budget
OUSD(C)	Office of the Under Secretary of Defense (Comptroller)
USD(C)	Under Secretary of Defense (Comptroller)
USD(P)	Under Secretary of Defense for Policy

PART II. DEFINITIONS

The following terms and their definitions are for the purpose of this Instruction.

access. Either providing GAO representatives with copies of a DoD record, or pertinent extracts of a DoD record; or permitting GAO representatives to inspect and review a record in DoD custody without physical removal of the record, or a copy of the record, from the custody of the Department of Defense.

access request. An oral or written request from GAO representatives, including heads of GAO field offices and headquarters officials, for access to a record in connection with the conduct of an authorized survey or review.

Comptroller General Report. A report that may be filed by the Comptroller General under the provisions of Section 716(b)(1) of Reference (e) if the Comptroller General is not given an opportunity to inspect a record within 20 days after a written Comptroller General Request is submitted to the Secretary of Defense or the Secretary of a Military Department. Such a report is filed with the President; the Director, OMB; the Attorney General; the Secretary concerned, and the Congress.

exempt record. A record that is exempt under the provisions of section 716(d) of Reference (e) from compulsory production under a subpoena issued by the Comptroller General or under a civil action initiated by the Comptroller General under the provisions of section 716 of Reference (d). Records pertaining to expenditures under sections 3524 and 3526(e) of Reference (e) are not subject to the provisions of section 716 of Reference (e). A record subject to exemption is:

A record related to activities the President designates as foreign intelligence or counterintelligence activities;

A record specifically exempted from disclosure to the Comptroller General by a statute that:

Without discretion, requires that the record be withheld from the Comptroller General;

Establishes particular criteria for withholding the record from the Comptroller General; or

Refers to particular types of records to be withheld from the Comptroller General.

A record that falls within the Freedom of Information Act exemptions specified in sections 552(b)(5) (relating to certain interagency or intra-agency memorandums) and 552(b)(7) of Reference (f) (relating to certain records compiled for law enforcement purposes). To qualify as an exempt record under this provision:

Either the President or the Director, Office of Management and Budget, must personally certify to the Comptroller General and the Congress that the record is one falling within one of the two exemptions and that its disclosure could reasonably be expected to impair substantially the operations of the Government; and

The certification must be made not later than 20 days after the Comptroller General has filed a Comptroller General report.

non-DoD entity. Any governmental or nongovernmental agency or individual outside the Department of Defense.

record. All written information, including books, documents, papers, correspondence, memorandums, and all other records, including maps, photographs, machine readable materials, or other documentary materials regardless of physical form or characteristics, which provide information about the duties, powers, activities, organization, and financial activities and financial transactions of the Department of Defense.

written Comptroller General request. A written request submitted by the Comptroller General under the provisions of section 716(b)(1) of Reference (e), which provides that when an agency record is not made available within a reasonable time, the Comptroller General may make a written request to the head of an agency. Such written requests shall state the authority for inspecting the records and the reason for the request. Once made, the head of an agency has 20 days after receiving the request to respond and, if a record is withheld, the response must describe the record being withheld and provide the reason the record is being withheld.