



INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
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MEMORANDUM FOR DEPUTY INSPECTOR GENERAL, ADMINISTRATIVE
INVESTIGATIONS

SUBJECT: Proactive Release under DoD OIG Privacy Act System of Records Notice

The Department of Defense Office of the Inspector General's (DoD OIG) Privacy Act System of Records Notice applicable to the Defense Case Activity Tracking System (D-CATS) was recently amended to add the following routine uses to facilitate the proactive release (release without a Freedom of Information Act (FOIA) request) of records outside DoD:

- to the news media and the public, unless releasing the information would result in an unwarranted invasion of privacy;
- to complainants, to the extent necessary to give them information or an explanation regarding the progress or results of any investigation; and
- to appropriate officials and employees of a federal agency or entity to which information may be relevant to a decision concerning the hiring, appointment, or retention of an individual; the issuance, renewal, suspension, or revocation of a security clearance; the execution of a security or suitability investigation; the letting of a contract; or the issuance or revocation of a grant or benefit.

This memorandum provides guidance on factors to consider in determining whether to make a proactive release of information maintained in D-CATS. Release authority should be at the Deputy Inspector General level, unless delegated.

To release information, either proactively or in response to a FOIA request, the public interest in disclosure must outweigh any protectable privacy interest. Public interest in disclosure exists when the information will shed light on an agency's performance of its statutory duties. Protectable privacy interests may exist in personal information about an individual. When weighing the public and privacy interests involved, DoD OIG policy, supported by Department of Justice guidance and case law, require the following (non-inclusive) factors to be considered:


- The nature of the information, such as whether it relates to misconduct in the performance of official duties, which would favor release, or is personal or off-duty in nature.
- The grade/rank level of individuals. Typically, the public interest in disclosure is greater in the conduct of individuals of higher grade/rank. Generally, the public interest in misconduct by a high-level government official outweighs the privacy interests of that official. Conversely, low level agency employees generally have a greater privacy interest.
- Whether the allegations were substantiated. There is a stronger argument for disclosure when the misconduct allegations are substantiated. However, the

balancing of public interest versus privacy rights should also be done when the allegation is not substantiated. For example, information related to unsubstantiated allegations involving high level officials, when the allegations and investigation are already publicly known and which address official conduct should also be considered for release.

- The level of media interest. Although not a determining factor, media interest or inquiries about the investigation may reflect public interest in the information and should be considered.
- Public interest in the report. As noted above, a factor to consider is whether the investigation contains something of interest to the public, is already publicly known, shows how the government works, or release of the information is necessary to provide public confidence that the DoD OIG has conducted a thorough investigation on an important matter of public concern.
- The privacy interest to protect. Another factor to consider is whether the information is personal, involves family matters, medical issues, or other private issues that the public has a lesser interest in knowing.
- The amount of required redactions. Another factor to consider is whether the released report would require so many redactions that it would be unreadable or subject to misunderstanding.

Most previously released reports of investigation involved substantiated allegations against senior officials, while Whistleblower Reprisal Investigation (WRI) reports were generally not released in the past. The public has a greater interest in the actions of senior officials, but the same analysis should be made with regard to WRI reports - military, civilian, and non-appropriated fund instrumentality - and responsible management officials of lesser grade/rank. For example, the public has an interest in knowing how the government operates, including: (1) that whistleblower reprisal allegations are being thoroughly investigated, and substantiated findings are reported to those responsible for taking action against the wrongdoer; and (2) that the DoD OIG is conducting thorough and appropriate investigations.

The Office of General Counsel is always available to assist with any questions concerning release of any report or the factors to consider in balancing the public interest in disclosure versus protectable privacy interests. Please let me or the Office of General Counsel know if you have any questions about this memorandum.



Glenn A. Fine
Acting Inspector General

cc: OIG Component Heads