

AR 7-3 (U) RESPONDING TO CONGRESSIONAL INQUIRIES

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Date: 12/06/2010

Category: 7 - Management **OPR:** OGC

Title: AR7-3 (U) RESPONDING TO CONGRESSIONAL INQUIRIES

CL BY:, **CL REASON:**, **DECL ON:**, **DRV FROM:**

(U) ADMINISTRATIVE REVISION SUMMARY: 12/06/2010
 (U//~~ATUO~~) This regulation supersedes AR 7-3, dated 08/17/2001.
 (U//~~ATUO~~) AR 7-3 is revised to update reference to the new Executive Order 13526, dated 29 December 2009.
 (U) References/links have been reviewed and updated as necessary and appropriate, including replacing (rescinded) HR 10-22 with AR 70-21, and (rescinded) DCID 2/13P with ICPM 2005-100-3.
 (U) *Bold faced text has been used to indicate revisions.*

(U) *This regulation was prepared by the Office of General Counsel, (secure) and the Office of Congressional Affairs, (secure).*

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3. (U) RESPONDING TO CONGRESSIONAL INQUIRIES

(U) SYNOPSIS. This regulation provides principles, rules, policies, procedures, and guidance for responding to Congressional inquiries.

a. **(U) AUTHORITY.** This regulation is issued pursuant to the Constitution of the United States of America; the National Security Act of 1947 (50 U.S.C. 401 et seq.); the Central Intelligence Agency Act of 1949 (50 U.S.C. 403a et seq.); the Privacy Act of 1974 (5 U.S.C. 552a); 18 U.S.C. 1001; any other applicable statutes; Executive Orders 12333, 12951, **13526**, and any other applicable Executive orders; and United States ex rel. Touhy v. Ragen, 340 U.S. 462 (1951).

b. (U) BACKGROUND

- (1) (U) Section 501 of the National Security Act provides that the President shall ensure that the House Permanent Select Committee on Intelligence (HPSCI) and the Senate Select Committee on Intelligence (SSCI) are kept fully and currently informed of U.S. intelligence activities, under procedures to protect against the unauthorized disclosure of classified information and information related to sources and methods. Section 502 of the Act provides that the Director of the Central Intelligence Agency (D/CIA), and the heads of all agencies, departments, and other U.S. Government entities involved in intelligence activities, shall keep HPSCI and SSCI fully and currently informed of such activities, "with due regard for the protection from unauthorized disclosure of classified information relating to sensitive intelligence sources and methods or other exceptionally sensitive matters." AR 7-2 provides guidelines for identifying matters the D/CIA and the Central Intelligence Agency (CIA) must consider reporting to HPSCI and SSCI under sections 501 and 502, and sets out basic procedures for such reports or notifications.
- (2) (U) In addition to those reports or notifications, other provisions of law, and various nonstatutory arrangements or agreements with HPSCI, SSCI, and the other intelligence oversight committees (for example, the Defense Appropriations Subcommittees), generate considerable interaction with Congress. The CIA and the Office of the D/CIA (O/DCIA) also receive a great number of congressional inquiries and requests for information and analysis, both written and oral, in formal and informal settings, at Headquarters and in the field, from non-oversight as well as intelligence oversight committees, subcommittees, Members, staffs, and offices. Personnel should consult with appropriate Headquarters elements, including Office of Congressional Affairs (OCA), for further, specific guidance concerning contact with congressional Members and staff in the field.
- c. (U) **BASIC CONSIDERATIONS.** Responses to inquiries from Congress must be not only timely, but also candid, complete, and correct. Such responses must comply with rules, procedures, and practices to appropriately safeguard sensitive information, while also giving Congress--especially the intelligence and appropriations committees, Members, and staffs--the information, visibility, and access required for effective congressional oversight. Responses to congressional requests for information or analysis must be consistent with applicable security, classification, privacy, separation-of-powers, and executive privilege principles and rules, but at the same time promptly provide the accurate, full, and forthright information that is critical to maintaining trust and partnership between the D/CIA and CIA, on the one hand, and the congressional intelligence oversight committees, on the other.

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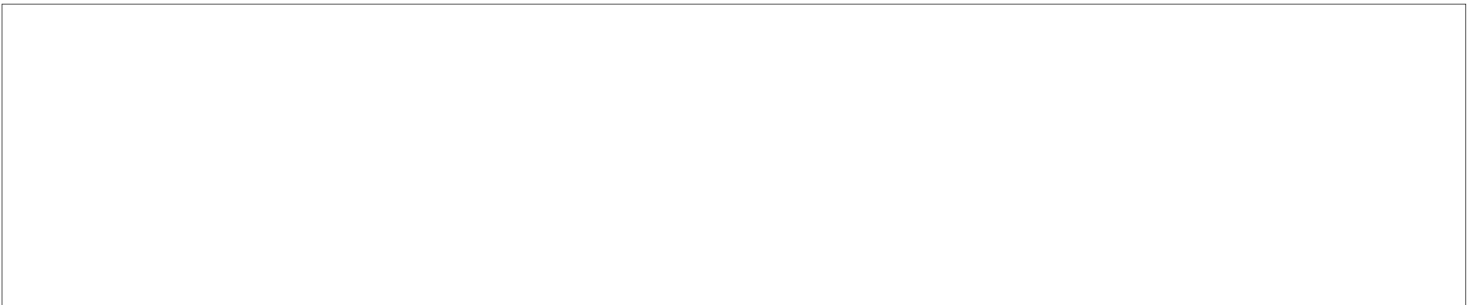
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e. ~~(U//A//FO)~~ **SPECIAL AUTHORITIES AND ARRANGEMENTS.** Consistent with applicable law and D/CIA guidance and the basic principles and substantive considerations in this notice, and as directed by their principals, the Office of Inspector General (OIG), the Office of General Counsel (OGC), the Office of the Chief Financial Officer (O/CFO), and the Office of the Deputy Director of the Central Intelligence Agency for Community Management (ODDCIA/CM), communicate directly with Congress in certain circumstances to carry out their respective missions and functions:



f. ~~(U//A//FO)~~ **SECURITY, CLASSIFICATION, AND NEED-TO-KNOW; ANALYTICAL VS. OPERATIONAL INFORMATION**

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(2) ~~(U//A//FO)~~ HPSCI and SSCI staffers generally are authorized to receive classified oversight briefings (subject, of course, to having received the appropriate clearances), but only designated staffers for those committees may be briefed on certain compartmented matters, such as covert actions, foreign liaison, and counterintelligence. Subject to Privacy Act, law enforcement, and/or

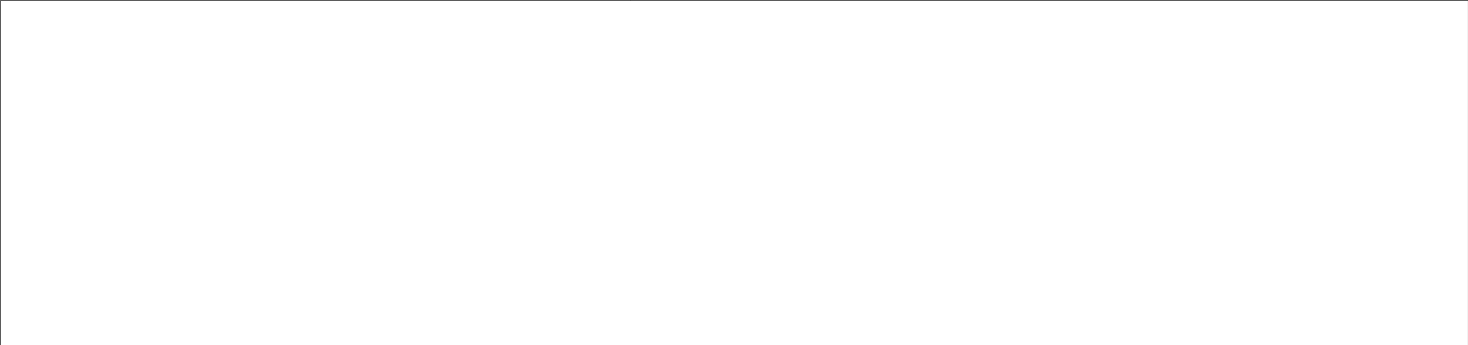
executive privilege or other legal constraints, analytical information generally is provided to any committee, Member, or staffer with a legitimate reason for requesting the information and the required clearance. As a general rule and as a matter of practice, information about operational activity (excluding specific source-identifying data) is provided only to the intelligence oversight committees.



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h. (U) PRIVACY ACT; U.S. PERSON INFORMATION

(1) (U) The Privacy Act of 1974, 5 U.S.C. 552a, provides that no agency may disclose any record about a U.S. citizen or Permanent Resident Alien (PRA) that is contained in a system of records by any means to any person, except pursuant to that citizen's or PRA's written request or prior written consent, unless one or more of 12 exceptions applies. Under one of the exceptions, it is not a violation of the Act if the disclosure is to either house of Congress, or to the extent of matter within its jurisdiction, any committee or subcommittee of Congress. CIA and O/DCIA personnel who receive requests for information about U.S. citizens or PRAs, even if those persons are also foreign officials, from an individual Member of Congress or individual staffer should obtain guidance from OCA and/or OGC on the appropriate response.



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i. (U) **“THE FOUR C’s.”** As a fundamental guiding principle, and with due regard to any of the legal or policy considerations cited in this notice that apply in the given case, CIA and O/DCIA personnel responding or reporting to Congress--whether a committee, subcommittee, Member, or staffer--should provide information that is candid, complete, and correct. Whether under oath or not, CIA and O/DCIA personnel must ensure that the information provided is, to the best of their knowledge, true and accurate, and responds to questions fully and forthrightly; criminal penalties may be imposed for knowingly and willfully making any materially false statements or falsifying or concealing a material fact. If an individual inadvertently provides incorrect information in a briefing or written response, or omits any significant information, the individual should contact OCA as soon as possible so that OCA may transmit corrected or additional information. Responses to Congress should be consistent with applicable law and regulations, policies, and practices regarding how and to whom CIA and the O/DCIA will provide various types, levels, and forms of information or analysis, as summarized in this Notice and the references.

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I. (U) Not used.



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n. **(U) GUIDANCE FOR WITNESSES AND BRIEFERS -- "DO's"**. Witnesses and briefers should: act professionally and courteously at all times; concentrate on the facts, render judgments only in the witness's or briefer's specific area of substantive expertise, and distinguish between facts and judgments; consult in advance with OCA on any potentially controversial aspect of the appearance, briefing, or testimony, or any potential problems the witness or briefer--as the substantive expert--perceives; as applicable, have knowledge of the analytical judgments of other IC agencies on the hearing or briefing subject, as well as of any major policy initiatives that relate to it, and discuss these with OCA before the hearing; and, obtain current guidance from OCA, and from the Directorate of Operations and/or other appropriate Agency or IC component(s) with an interest in the matter, before providing classified testimony or a classified briefing on a crisis situation (such briefings usually require advance approval by senior management).

o. **(U//~~FOUO~~) GUIDANCE FOR WITNESSES AND BRIEFERS -- "DON'Ts"**. Witnesses or briefers should not: attempt to respond to a question if the witness or briefer is uncertain of the answer (it is perfectly acceptable to indicate that uncertainty, and that an answer will be provided as soon as possible after the hearing or briefing, via the OCA liaison officer); discuss other programs or activities that are not related or relevant to the issue being testified on or briefed; comment directly on or offer personal views on the merits of policy issues (it is permissible to assess factors affecting the likelihood of meeting U.S. policy goals and to discuss foreign reaction to U.S. policy initiatives); offer CIA or O/DCIA analytical products to Members' personal staffers (intelligence oversight committee staffers receive such products on a standardized basis); or provide documents or discuss analytical products of other agencies unless the document is already available to Congress or the originating agency has given prior approval.

p. (U) RESPONSES TO CONGRESSIONAL INQUIRES IN OTHER SETTINGS

- (1) (U//~~ATUO~~) HPSCI, SSCI, HAC, and SAC (or other) staff (or Members) may raise questions directly with CIA and O/DCIA personnel in settings other than hearings, briefings, formal meetings, or other prearranged sessions. For example, requests for information may be made by phone, or face-to-face during unscheduled encounters at Headquarters or in the field. Personnel who receive such inquiries should exercise sound judgment, in accordance with the principles and policies summarized in this Notice, in determining how best to respond. Whenever feasible and appropriate, personnel should refer such inquiries to OCA (and, if the inquiries relate to CIA resource or budget issues, to the Office of the CFO).
- (2) (U//~~ATUO~~) When referral would not be reasonable or appropriate, and subject to the legal and policy constraints summarized in this notice, CIA or O/DCIA personnel--to the best of their knowledge--may and should respond candidly, completely, correctly, and consistently to such 'unscheduled' inquiries. As with responses to questions in hearings or briefings, personnel should: concentrate on the facts; distinguish between facts and judgments; avoid speculative comment; refrain from volunteering personal positions; and clearly indicate if a statement is speculative rather than based on direct and full knowledge or is a personal judgment or view on an issue (vice the D/CIA's or CIA's official, 'corporate' position or judgment). As a basic rule, personnel who respond directly to congressional inquiries outside of hearings, briefings, or similar scheduled sessions should advise OCA as soon as possible of the response, so that OCA may officially document it and assess whether it is necessary to supplement or correct it.

q. (U//~~ATUO~~) WHISTLEBLOWER PROCEDURES. Although there are several formal processes under which CIA and the O/DCIA must inform Congress (and the Department of Justice) of possibly or actually illegal and/or improper activities, Agency personnel sometimes may believe it necessary or appropriate to personally report such matters to Congress. An notice, titled "Employee Communications With Congress" (dated 9 July 1998), and the Intelligence Community Whistleblower Protection Act of 1998, provide rules, obligations, and procedures for CIA and O/DCIA personnel who want to contact Congress personally about such matters, in a manner that protects the interests of both the U.S. Government and the individual employee (or contractor). Such personnel who act subject to and in compliance with the 1998 Act and applicable internal guidance will be protected against retaliation or reprisal for such activity. Questions regarding the rules and procedures for employee communications with Congress under the 1998 law and Agency Notice should be directed to the Assistant Inspector General for Investigations, the Deputy Director of Congressional Affairs for Intelligence Liaison, or the Deputy General Counsel.