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OPR: OGC

Title: AR 7-8 RESPONSE BY EMPLOYEES AND FORMER
EMPLOYEES TO SUBPOENAS, ORDERS, AND OTHER DEMANDS BY
COURTS OR OTHER AUTHORITIES

This regulation was written by the Office of General Counsel, [] (secure).

(b)(3)

**8. RESPONSE BY EMPLOYEES AND FORMER EMPLOYEES TO SUBPOENAS,
ORDERS, AND OTHER DEMANDS BY COURTS OR OTHER AUTHORITIES**

SYNOPSIS. This regulation prescribes the policy, responsibilities, and procedures that govern the responses of employees and former employees to demands for testimony or information on matters concerning official Agency duties. *(NOTE: Boldfaced text in this regulation indicates revisions.)*

a. **AUTHORITIES.** 50 U.S.C. 403g; 50 U.S.C. 403-3(d); Executive Order 12333; 32 C.F.R. Part 1905.

b. **DEFINITIONS**

- (1) **DEMAND.** A demand is any subpoena, order, or other legal summons that is issued by a court, administrative agency, congressional committee, or other entity with the authority to require a response on a particular matter. **A demand also includes any request for production or disclosure which may result in the issuance of a subpoena, order, or other legal process to compel production or disclosure.**
- (2) **PRODUCTION OR DISCLOSURE.** As used in this regulation, the production or disclosure sought by a demand upon an employee or former employee concerns information with respect to either:
 - (a) Any material contained in the files of the Agency,
 - (b) Any information relating to material contained in the files of the Agency, or
 - (c) Any information acquired by persons while such persons were employees of the Agency as a part of the performance of their official duties or because of their official status.
- (3) **EMPLOYEES.** For the purpose of this regulation, employees include former employees, **independent contractors, and former independent contractors.**

- (4) **SENIOR OFFICIALS** Senior officials are defined as the Deputy Director of the Central Intelligence Agency (DD/CIA), Deputy Directors, and Heads of Independent Offices.
- c. **POLICY.** No employee will respond to a demand involving production or disclosure without prior authorization as set forth in this regulation **and 32 C.F.R. Part 1905, otherwise known as the Agency's Touhy regulation.**
- d. **RESPONSIBILITIES**
- (1) Employees will:
- (a) Immediately notify the General Counsel whenever a demand is made upon them for production or disclosure.
 - (b) Request, if oral/written testimony is sought by the demand, that the person seeking the demand, or that person's attorney, provide a statement setting forth a summary of the information sought by the demand.
- (2) The General Counsel will:
- (a) **Determine whether production, if authorized, is appropriate in view of relevant privileges, applicable Agency regulations or directives, federal law, and Department of Justice policy on defending third-party subpoenas.**
 - (b) **If production would be appropriate if authorized, contact the Deputy Directors or Heads of Independent Offices with responsibility for the information that is sought by the demand, or their designees, for a determination as to whether production or disclosure may be authorized.**
 - (c) Request the DD/CIA to reach a determination in instances of demands not clearly related to the responsibilities of any Deputy Director or Head of Independent Office.
 - (d) Inform the appropriate Department of Justice or U.S. Attorney and such other persons as circumstances may warrant whenever a final decision is made with respect to responding to the demand.
- (3) Senior officials will:
- (a) Immediately notify the General Counsel of any decision to approve or disapprove production or disclosure in response to a demand.
 - (b) **Any decision to disapprove a demand by a federal court or other federal entity for production or disclosure shall be referred to the DD/CIA, who shall make the final decision with the advice of the General Counsel.**
- e. **PROCEDURE WHEN AN AGENCY DECISION IS NOT MADE PRIOR TO THE TIME A RESPONSE TO THE DEMAND IS REQUESTED.** If response to the demand is required before an Agency decision is reached, the General Counsel will request the U.S. Attorney, or such other attorney as may be designated for the purpose, to appear with the employee of the Agency upon whom the demand has been made, furnish the court or other authority with a copy of this regulation **and of 32 C.F.R. Part 1905**, and inform the court or other authority as to the status of the demand. The court or other authority will be requested to stay the demand pending resolution by the Agency.

f. **PROCEDURE IN THE EVENT OF AN ADVERSE RULING.** If the court or other authority declines to stay the effect of the demand in response to a request made in accordance with this regulation, or if the court or other authority rules that the demand must be complied with irrespective of a final decision by the DD/CIA not to produce the material or disclose the information sought, the employee upon whom the demand has been made will, with the assistance of an attorney from the Office of General Counsel and as authorized pursuant to the Supreme Court decision in *United States ex. rel. Touhy v. Ragen*, 340 U.S. 462 (1951), respectfully decline to comply with the demand.