

RELEASE OF OFFICIAL INFORMATION IN JUDICIAL OR QUASI-JUDICIAL PROCEEDING

7-1 **Applies to** any request for information for all types of litigation

7-5a **DA Policy** is to make official information reasonably available for use in Federal and State courts and by other Governmental bodies unless classified, privileged, or otherwise protected from public disclosure.

FORMAT: Failure to comply with 1-4 below may result in automatic denial

1. It is a written request for official information 7-2d
 - a. If a phone call/e-mail, request a formal letter
 - b. If a subpoena/court order
 - i. Consult LITDIV or USAO 7-2f
 1. LITDIV may have AUSA remove case from state court to quash or stay subpoena in federal court.
 2. LITDIV may chose not to oppose order/subpoena thereby requiring production
 - ii. If no time to consult LITDIV or USAO 7-2f
 1. furnish court or tribunal with a copy of AR 27-40
 2. Inform court that requestor has not complied with regulation and if agency is/is not looking for requested material
 3. If court refuses to stay or quash subpoena, notify LITDIV
2. It relates to ongoing litigation (judicial or quasi-judicial proceeding) 7-1a
 - a. If not, process IAW AR 25-55 or AR 340-21 7-1a
3. It provides 14 days advance notice 7-2d
4. It states nature and relevance 7-2d

SUBSTANCE: If request is appropriate, the next step is assessing the content of the request.

1. You have the items/witnesses requested, and
2. None of the following apply
 - a. SJA unable to resolve—LITDIV 7-3a, 7-7(c)
 - b. Involves affirmative litigation—LITDIV 7-3a(2)
 - c. Involves patents, copyrights, privately developed tech. info, trademarks—IP Law 7-3a(3)
 - d. Involves taxation—KFLD 7-3a(4)
 - e. Involves communication, transportation, or utility service proceedings—REG Law 7-3a(5)
 - f. Involves environmental law—ELD 7-3a(6)
 - g. Contract appeals before ASBCA—KFLD 7-3a(7)
 - h. Procurement fraud and Qui Tam—KFLD 7-3a(8)
 - i. Involves IG records—LITDIV 7-2h
 - j. Involves classified information—LITDIV 7-2 g
3. If request is proper, you have the documents, and you do not need to transfer to another agency as stated above, you may deny release if:

- a. Request is unduly burdensome or otherwise inappropriate under applicable court rules 7-5b(2)
 - b. Disclosure is not appropriate under rules of procedure governing the matter in which the request arose 7-5b (3)
 - c. Disclosure would violate a statute, executive order, regulation, or directive 7-5b(4)
 - d. Disclosure is not appropriate under relevant substantive law concerning privilege 7-5b(5)
 - e. Disclosure would reveal classified information or unclassified data withheld from public release, or other matter exempt from unrestricted disclosure 7-5b(6)
 - f. Disclosure would interfere with ongoing enforcement proceedings, compromise constitutional rights, reveal the identity of an intelligence source or confidential informant, disclose trade secrets, or otherwise be inappropriate under the circumstances 7-5b(7)
 - g. Disclosure would violate someone's expectation of confidentiality or privacy 7-5b(8)
4. Some of the information is covered in paragraph 7-5b
- a. Privacy Act:
 - i. Redact if possible
 - ii. Require requestor to obtain order from Federal Judge or Magistrate 7-7b(1)
 - iii. Requestor provides Privacy Act waiver 7-7b(1)
 - b. Other
 - i. If classified, can you provide a declassified version of records
 - ii. If medical records, can you obtain a HIPAA waiver
 - iii. If other protected records, is there a waiver available
5. Now fully screened, and within the OJSA's ability
- a. Records
 - i. Inform requestor that fee may be assessed IAW DoD FMR 7-4(c)
 - ii. Ask custodian what the anticipated cost to produce records would be and ask how much requestor willing to spend
 - iii. Screen documents for any potential PII, privilege, etc.
 - iv. Provide material in native format or in manner best suited to track and confirm receipt.
 - v. The production can be no more expansive than what was requested (and approved)in writing 7-2d
 - b. Witnesses
 - i. Voluntary, but there are consequences to refusal (contempt, bench warrant)
 - ii. Expert testimony generally not permitted. 7-10a Exceptions:
 - 1. Exceptional need/unique circumstances—notify LITDIV 7-10b
 - 2. AMEDD (involves work expert performed, fact based, and no hypothetical or prognosis opinions) 7-10c
 - 3. Court ordered—notify LITDIV 7-10d
 - iii. May not seriously interfere with mission 7-11
 - iv. No expense to the government if requested by state or third party 7-16