



REPLY TO
ATTENTION OF:

DEPARTMENT OF THE ARMY
DEFENSE LANGUAGE INSTITUTE FOREIGN LANGUAGE CENTER
AND PRESIDIO OF MONTEREY
OFFICE OF THE STAFF JUDGE ADVOCATE
1336 PLUMMER STREET, BLDG. 275
MONTEREY, CALIFORNIA 93944

ATZP-JA

July 2010

MEMORANDUM FOR ALL

SUBJECT: Releasability of Electronic Mail (E-Mail)

1. PURPOSE: To inform commanders of the rules concerning the public's access to government e-mail under the Freedom of Information Act (FOIA).

2. REFERENCES:

a. The Freedom of Information Act, 5 U.S.C. § 552, as amended by the Electronic Freedom of Information Act Amendments of 1996, Pub. L. No. 104-23 1, I IO Stat. 3 048.

b. Army Regulation (AR) 25-55, The Department of the Army Freedom of Information Act Program, 1 November 1997.

c. Memorandum for Secretaries of the Military departments, Withholding of Personally Identifying Information Under the Freedom of Information Act (FOIA), 01 September 2005.

d. DoDD 5400.07, DoD Freedom of Information Act (FOIA) Program, 02 January 2008.

3. DISCUSSION:

a. Any member of the public may, upon request, obtain almost any government record under the FOIA. A 1996 amendment to the FOIA changed the definition of "records" to include those created and maintained in electronic format. The change means that most e-mail messages sent in the ordinary course of government business are treated as government records, not personal correspondence. Members of the public are now entitled to obtain most e-mail traffic. Like any other government records, copies of e-mail messages must be filed IAW the MARKS System or archived electronically.

b. E-mail traffic subject to release includes e-mail traffic dealing with Department of Defense (DoD) missions or business, e-mail records kept for business purposes to be used in other actions or that will be repeatedly retrieved, and e-mails reflecting policies, procedures, actions, or decisions.

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c. E-mail traffic not subject to release includes notices of promotions, birthdays, births, and jokes. Such e-mail is considered personal correspondence since it does not deal with DoD missions or business.

d. Release of e-mail may be denied under the nine narrow FOIA exemptions outlined in AR 25-55, Chapter 3. Examples of exempt records are classified records, certain records related to internal personnel rules or practices, records exempt from FOIA by statute (such as trade secrets), subjective advice and recommendations prior to a final decision, and certain law enforcement records. Furthermore, most personnel information requests, including names, organizations, job titles, phone numbers, etc., should be closely scrutinized to protect DoD employees (both civilian and military). All such requests for personnel information concerning military members and DA Civilians should be reviewed by the Office of the Staff Judge Advocate, Administrative Law Division.

4. CONCLUSION: Soldiers and DA Civilians must remember that most e-mail they send is potentially releasable to the general public. Therefore, each of us should carefully consider if our electronic words can withstand public scrutiny.

5. If you have any questions or need further information, please feel free to contact the Office of the Staff Judge Advocate, Administrative Law Division, at (831) 242-6402.



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