

§ 93.1 References.

(a) DoD Directive 5405.2,¹ "Release of Official Information in Litigation and Testimony by DoD Personnel as Witnesses," July 23, 1985, reprinted in 32 CFR part 97.

(b) E.O. 12333, United States Intelligence Activities, 3 CFR, 1981 Comp., p. 200, reprinted in 50 U.S.C. app. 401.

(c) The National Security Agency Act of 1959, Public Law No. 86-36, as amended, 50 U.S.C. app. 402.

(d) Rule 4, Federal Rules of Civil Procedure.

(e) DoD Instruction 7230.7,² "User Charges", January 29, 1985.

(f) 28 CFR 50.15.

§ 93.2 Purpose and applicability.

(a) This part implements § 93.1(a) in the National Security Agency/Central Security Service including all field sites (hereinafter referred to collectively as NSA). The procedures herein are also promulgated pursuant to the NSA's independent authority, under § 1.12(b)(10) of E.O. 12333 referenced under § 93.1(b), to protect the security of its activities, information and employees. This part establishes policy, assigns responsibilities, and prescribes mandatory procedures for service of process at NSA and for the release of official information in litigation by NSA personnel, through testimony or otherwise.

(b) This part is intended only to provide guidance for the internal operation of the NSA and does not create any right or benefit, substantive or procedural, enforceable at law against the United States, the Department of Defense, or NSA. This part does not override the statutory privilege against the disclosure of the organization or any function of the NSA, of any information with respect to the activities thereof, or of the names, titles, salaries, or numbers of the persons employed by the NSA. See section 6(a) of the DoD Directive referenced under § 93.1(a).

¹Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

²See footnote 1 to § 93.1(a).

§ 93.3 Definitions.

(a) *Service of process.* Refers to the delivery of a summons and complaint, or other document the purpose of which is to give notice of a proceeding or to establish the jurisdiction of a court or administrative proceeding, in the manner prescribed by § 93.1(d), to an officer or agency of the United States named in court or administrative proceedings.

(b) *Demand.* Refers to the delivery of a subpoena, order, or other directive of a court of competent jurisdiction, or other specific authority, for the production, disclosure, or release of official information, or for the appearance and testimony of NSA personnel as witnesses.

(c) *NSA personnel.* (or NSA person) Includes present and former civilian employees of NSA (including non-appropriated fund activity employees), and present and former military personnel assigned to NSA. NSA personnel also includes non-U.S. nationals who perform services overseas for NSA under the provisions of status of forces or other agreements, and specific individuals hired through contractual agreements by or on behalf of NSA.

(d) *Litigation.* Refers to all pretrial, trial, and post-trial stages of all existing or reasonably anticipated judicial or administrative actions, hearings, investigations, or similar proceedings before civilian courts, commissions, boards, or other tribunals, foreign and domestic. It includes responses to discovery requests, depositions, and other pretrial proceedings, as well as responses to formal or informal requests by attorneys or others in situations involving litigation.

(e) *Official information.* Is information of any kind, in any storage medium, whether or not classified or protected from disclosure by § 93.1(c) that:

(1) Is in the custody and control of NSA; or

(2) Relates to information in the custody and control of NSA; or

(3) Was acquired by NSA personnel as part of their official duties or because of their official status within NSA.

(f) *General Counsel.* Refers to the NSA General Counsel (GC), or in the GC's absence, the NSA Deputy GC, or in both of their absences, the NSA Assistant GC (Administration/Litigation).