

August 26, 1982
NUMBER 7650.1

2



Department of Defense Directive

ASD(C)

SUBJECT: General Accounting Office Access to Records

- References:
- (a) DoD Directive 7650.1, "General Accounting Office Comprehensive Audits," July 9, 1958 (hereby canceled)
 - (b) Office of Management and Budget (OMB) Bulletin 81-14, "Exemptions from GAO Access to Records," March 23, 1981
 - (c) Title 31, United States Code, Section 67
 - (d) through (h), see enclosure 1

A. REISSUANCE AND PURPOSE

This Directive reissues and updates reference (a), assigns responsibilities, and establishes procedures (1) for responding to requests for access to records by the General Accounting Office (GAO); and (2) that apply when records are exempt from access enforcement provisions. This Directive implements reference (b) for the Department of Defense.

B. APPLICABILITY

The provisions of this Directive apply to the Office of the Secretary of Defense (OSD), the Military Departments, the Organization of the Joint Chief of Staff (OJCS), the Unified and Specified Commands, and the Defense Agencies (hereafter referred to as "DoD Components").

C. DEFINITIONS

1. Access. Includes providing copies of documents to GAO representatives and providing pertinent extracts of documents, or permitting full visual, on-site review of the information, but without permitting physical removal of the documents.

2. Requests for Access. Include (a) oral requests from GAO representatives conducting an authorized review; (b) written requests from heads of GAO field offices or headquarters officials; and (c) formal requests from the Comptroller General, as described in enclosure 2.

D. POLICY

1. It is the policy of the Department of Defense to cooperate with GAO in responding quickly to its requests for information, including allowing the GAO complete access to pertinent records within the limitations prescribed in section E., herein. The GAO has broad statutory authority for conducting audits, evaluations, and investigations in the executive departments and agencies of the federal government to

DTIC
ELECTE
NOV 12 1993
A

93 11 0 0 1 2

93-27328



enable the Comptroller General to determine how each department or agency under review discharges its programs, activities, and financial responsibilities.

2. Under 31 U.S.C. 67 (reference (c)), GAO audits shall be conducted in recognition of generally accepted principles of auditing, including consideration of the effectiveness of accounting organizations and systems, internal audits and controls, and related administrative practices of the respective agencies, thereby eliminating duplication of audit efforts. The results of GAO reviews are contained in reports usually made available to the Secretary of Defense and the DoD Components, as applicable (see DoD Directive 7650.2, reference (d)).

3. Section 313 of the Budget and Accounting Act of 1921 (reference (e)) states that authorized representatives of GAO have the right of access to and are allowed to examine the federal agency records necessary to permit them to carry out their duties and responsibilities. As amended by Pub. L. 96-226 (reference (f)), the Act provides the Comptroller General with authority to seek a court order to compel the release of federal records and to subpoena nonfederal records. Reference (f) also provides for exemptions to that authority (see enclosure 2).

4. Under OMB Circular No. A-10 (reference (g)), the Department of Defense shall withhold budgetary material for a fiscal year until the budget for that fiscal year is transmitted to the Congress by the President. Selected program acquisition data and total outyear fiscal projections shall not be released to GAO until after submission of the President's budget to the Congress, normally in January of each year. However, the withholding of specific material following a formal request for access from the Comptroller General must be carefully weighed and reevaluated on a case-by-case basis giving due consideration to the provisions of reference (f) (see enclosure 2).

E. PROCEDURES

The following procedures shall apply in considering requests from GAO for access to DoD records and information.

1. General

a. Most GAO requests for information can be processed by the DoD Components without referral to OSD, and most documents requested can be supplied routinely and without delay. Generally, both oral and written requests received from GAO representatives shall be handled informally and an effort made to accommodate GAO needs at the lowest organizational level possible. DoD Components shall follow existing guidance (see DoD Directive 7650.2, reference (d)) with respect to relationships with GAO and work through established liaison channels to handle any problems regarding access. GAO representatives shall be kept informed of the status of their requests.

b. When a formal written request from the Comptroller General for access to records is received by the Secretary of Defense or a Secretary of the Military Departments, it shall be referred immediately to the appropriate DoD Component for action. Suspense dates shall be established to ensure that a response is made to the Comptroller General by the Secretary concerned within the 20 days mandated by law (see enclosure 2).

c. A formal written request from the Comptroller General conveys that GAO had made previous unsuccessful attempts to gain access to the materials in question. Following receipt of a formal Comptroller General request, the head of the DoD Component concerned shall reevaluate the previous decisions relating to the release of the materials. If a positive decision results, access shall be granted to GAO and the materials shall be furnished without further delay. A written response shall be prepared to the Comptroller General's request. If a negative decision results, the procedures in subsection E.2., below, will apply.

d. When the GAO requests access to a number of documents, including some that the DoD Component determines are necessary to withhold, action must be taken without delay to grant GAO access to the uncontested documents, or portions thereof, and to proceed promptly toward a resolution of the contested documents' status.

e. Responsibility for release of reports and documents of non-DoD agencies rests with the originating agency. Normally, GAO shall be requested to obtain these documents from the originator, although DoD Components may release these records with the consent of the originator. Similarly, the permission of the originator shall be obtained first before release of documents prepared or controlled by OSD, OJCS, or other DoD Components. GAO representatives shall be referred to the appropriate OSD office on any requests for information from the Five-Year Defense Plan, program change requests, program change decisions, program budget decisions, and technical development plans. Requests for information concerning operation plans or support plans involving joint Service participation shall be referred by the Unified or Specified Command concerned directly to OJCS for action as appropriate.

f. For routine or nonsensitive materials, the DoD Component normally shall contact the originator to clear their release. DoD Components may not obstruct GAO's review by unnecessary referrals.

g. Final audit reports issued by the DoD Component's internal audit organizations and associated working papers shall be made available to representatives of the GAO, when requested. GAO's requests for audit reports shall be referred to appropriate DoD liaison channels. Supplementary data on findings and recommendations contained in audit reports, such as management's position on the audit report and corrective action to be taken, shall be furnished concurrently with the release of the report, or as soon thereafter as practicable.

2. Exemptions

a. The GAO Act of 1980 (reference (f)) further provides for certain exemptions to the Comptroller General's enforcement authority. These include material (1) relating to foreign intelligence or counterintelligence activities; (2) specifically exempt from disclosure to the Comptroller General by statute; or (3) meeting specific exemption criteria under DoD 5400.7-R (the Freedom of Information Act (FOIA), reference (h), see enclosure 2). For material that is within either of two specified FOIA-exempt categories, the President or the Director, OMB, also must certify in writing that disclosure of the materials to the Comptroller General reasonably can be expected to substantially impair the operations of the federal government.

DTIC QUALITY INSPECTED 8

Dist	Avail. and/or Special
A-1	

from 50

b. Denials of material relating to foreign intelligence or counter-intelligence activities, or materials specifically exempt from disclosure to the Comptroller General by statute, may be made by the DoD Component head after appropriate review to ensure that materials legitimately fall within either stated category. Following denial, no further action needs to be taken to obtain exemption to GAO's access provisions. Although the Comptroller General may be precluded from enforcing access to specific material relating to foreign intelligence or counterintelligence activities, such information shall not be denied categorically to properly cleared GAO representatives having a need to know. Careful consideration must be exercised before denying GAO access to foreign intelligence or counterintelligence material, and denials should be supported legitimately.

c. When a denial of access to a formal request from the Comptroller General is contemplated, the DoD Component head is encouraged to meet with GAO representatives to determine if alternative methods exist for accommodating GAO before initiating action to deny formally the Comptroller General's request. The DoD Component's legal counsel shall review any proposed denial action to ensure that it qualifies as a valid exemption under the access provisions of Pub. L. 96-226 (reference (f)) and coordinate this action with the General Counsel, DoD.

d. When a compromise is reached in providing the material formally requested by the Comptroller General, it shall be confirmed in writing to the Comptroller General with the provision that any later formal requests for the information will be considered a new request and be governed by a new 20-day response period.

e. When it is determined that valid reasons exist for denying access to the materials requested by a formal Comptroller General letter, a reply to that effect shall be prepared for the signature of the DoD Component head concerned. The letter shall be transmitted to the Comptroller General within the 20-day response period prescribed by law.

f. When the material requested by the Comptroller General falls within either of two specified categories under the FOIA (see paragraph 4., enclosure 2) and its release could be considered to substantially impair the operations of the federal government, the action office shall prepare for the signature of the DoD Component head a request for exemption to the GAO access provisions. The request shall state clearly which exemption applies, and explain the reasons for requesting exemption; that is, why it is included under that particular FOIA category and why disclosure to the GAO would substantially impair the operation of the federal government. Requests shall be reviewed by the Component's legal counsel and coordinated with the General Counsel, DoD. GAO liaison channels shall be kept apprised of the proposed course of action, so that they may keep GAO representatives informed of the status of the Comptroller General's request.

g. Except in unusual circumstances, requests for exemption shall be addressed to the Director, OMB, rather than the President. The request shall be transmitted to OMB in two copies and, unless it is not feasible because of sensitivity or volume, shall be accompanied by copies of the material sought by GAO to permit proper evaluation of DoD's request. OMB shall be permitted to review the material in question. Such requests shall also include informa-

tion on prior requests for exemption of the materials. Requests for exemption shall be provided to OMB no later than the date of the DoD response to the Comptroller General's formal request. If, at the discretion of the Secretary of Defense, an exemption is requested from the President rather than from OMB, a copy of the request shall be provided to the OMB General Counsel's Office. GAO representatives shall be kept apprised of the action being taken.

h. If DoD's request for an exemption is denied by the Director, OMB (or the President, as the case may be), the GAO shall be notified of the decision by the appropriate liaison office, and arrangements shall be made to provide the requested materials to GAO without further delay.

F. RESPONSIBILITIES

1. The Assistant Secretary of Defense (Comptroller) shall establish and supervise the execution of policies and procedures related to access to DoD records, including budgetary material, by the GAO.

2. The General Counsel, DoD, shall review DoD Component requests for exemption from the access provisions of Pub. L. 96-226 (reference (f)) and advise on the legal sufficiency of such requests.

3. The Assistant to the Secretary of Defense (Review and Oversight) through the Director, GAO Affairs, shall serve as the principal point of contact in providing assistance as necessary, and working with DoD Component liaison officials in processing GAO's requests and arranging meetings between DoD and GAO representatives.

4. The Heads of DoD Components shall:

a. Develop internal written procedures that will implement the requirements of this Directive and establish individual responsibility for ensuring that GAO requests for information are processed promptly.

b. Use the liaison offices established under DoD Directive 7650.2 (reference (d)) to coordinate and respond to GAO requests for access to information and records, and to act as focal points for processing requests for exemption from GAO access provisions.

c. Maintain records and files of actions taken on GAO requests for access to records that will ease in researching decisions and resolving any later differences. Records and files shall identify the documents requested by GAO and explain clearly the reasons for requesting any exemption from the access provisions of Pub. L. 96-226 (reference (f)).

d. Ensure that preliminary action taken to deny any GAO request for information is reviewed expeditiously and processed through appropriate channels.

¹ DoD Directive 7650.2 (reference (d)) contains additional guidance on DoD's administrative relationships with GAO and the role of the Director, GAO Affairs, as the primary DoD liaison with GAO.

e. Notify promptly the Director, GAO Affairs, and keep him informed of any action being contemplated to deny access after receipt of a formal request from the Comptroller General. When access issues arise whose resolution may affect other DoD Components, coordinate actions with OSD and ensure that the Director, GAO Affairs, is kept informed.

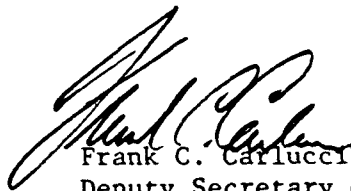
f. Ensure that GAO requests are satisfied to the maximum extent feasible, including developing mutually acceptable alternatives to providing records requested if an exemption under the criteria specified in enclosure 2 is justified. More explicit procedures for responding to formal requests from the Comptroller General are contained in section E., herein.

g. Ensure that requests to the Director, OMB, for exemptions to these access provisions are timely, accurate, and complete, and have been reviewed by the DoD Component counsel or the General Counsel, DoD, as appropriate.

h. Provide remarks to clarify or otherwise improve the validity and use of information furnished to GAO, especially when the documents may be subject to misinterpretation or do not convey a complete or accurate picture of the subject matter being reviewed. The provision of supplementary comments should not delay the release of the requested documents.

G. EFFECTIVE DATE AND IMPLEMENTATION

This Directive is effective immediately. Forward one copy of implementing documents to the Assistant Secretary of Defense (Comptroller) within 90 days.


Frank C. Carlucci
Deputy Secretary of Defense

Enclosures - 2

1. References
2. Access to Records Provisions

REFERENCES, continued

- (d) DoD Directive 7650.2, "General Accounting Office Audits and Reports," November 17, 1980
- (e) Title 31, United States Code, Section 54, "Budget and Accounting Act of 1921"
- (f) Public Law 96-226, "General Accounting Office Act of 1980"
- (g) OMB Circular No. A-10, "Responsibilities for Disclosure with Respect to the Budget" November 12, 1976
- (h) DoD 5400.7-R, "DoD Freedom of Information Act Program," December 1980 (5 U.S.C. 552(b)(5) and (7)), authorized by DoD Directive 5400.7, "DoD Freedom of Information Act Program," March 24, 1980

ACCESS TO RECORDS PROVISIONS

The following are the principal procedures established by Pub. L. 96-226 (reference (f)) as they relate to access to records by GAO:

1. If GAO's initial efforts to gain access to requested materials are not successful within a reasonable period of time, the Comptroller General may make a formal, written request to the Secretary of Defense or Secretaries of the Military Departments, giving the authority and reason for the request. The Secretary of Defense or Secretary of a Military Department then has 20 days from the date of receipt to respond and describe any materials withheld, and the reasons therefor. If the Comptroller General has not gained access to all of the requested materials within the 20-day period, he may file a written report on the matter with the President, the Director of OMB, the Attorney General, the agency head, the Speaker of the House, and the President of the Senate. Twenty calendar days after filing the written report, the Comptroller General may seek an order in the U.S. District Court for the District of Columbia to compel the Department of Defense to produce the material withheld.
2. The law also authorizes the Comptroller General to seek judicial enforcement of subpoenas issued to nonfederal parties such as contractors, subcontractors, grantees, or other recipients of federal assistance, for those materials and documents to which the Comptroller General already has access by law or by agreement of the nonfederal party.
3. Section (d) of Pub. L. 96-226 (reference (f)) provides for certain exemptions to the Comptroller General's enforcement authority. This section precludes judicial enforcement of a request for access if (a) the material relates to activities designated by the President as being foreign intelligence or foreign counterintelligence activities; (b) the materials are specifically exempted from disclosure to the Comptroller General by statute; or (c) the Comptroller General requests materials that are within either of two specified exemptions under DoD 5400.7-R (reference (h)) (see paragraph 4., below); and within 20 days after the Comptroller's written report is filed, the President or the Director of OMB certifies in writing to the Comptroller General, the Speaker of the House, and the President of the Senate that disclosure of the material to the Comptroller General reasonably could be expected to substantially impair the operations of the federal government.
4. The two Freedom of Information Act exemptions are (a) subsection 3-200, Number 5.b., DoD 5400.7-R (reference (h)), which exempts interagency or intra-agency memoranda or letters unavailable by law to a party other than agency in litigation with the agency; and (b) subsection 3-200, Number 7., reference (h), which exempts investigatory records compiled for law enforcement purposes, but only to the extent that release of these records would:
 - a. Interfere with enforcement proceedings.
 - b. Deprive a person of a right to a fair trial or an impartial adjudication.
 - c. Constitute an unwarranted invasion of personal privacy.
 - d. Disclose the identity of a confidential source.

e. Disclose confidential information furnished only from a confidential source and obtained by a criminal law enforcement authority in a criminal investigation, or by an agency conducting a lawful national security intelligence investigation.

f. Disclose investigative techniques and procedures.

g. Endanger the life or physical safety of law enforcement personnel.