

Department of the Interior

Departmental Manual

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Series: Departmental Management

Part 304: Relationships With Outside Agencies

Chapter 1: Exemptions from GAO Access to Records

Originating Office: Office of the Solicitor

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1.1 **Purpose.** This chapter provides instructions for implementing subsection (d)(3) of Section 313 of the Budget and Accounting Act of 1921, as amended (31 U.S.C. 54(d)(3)). It applies to all Departmental bureaus or offices that seek certification in order to be exempted from GAO's enforcement authority. Additional details are contained in OMB Bulletin No. 81-14, March 23, 1981.

1.2 Background

A. Section 313 of the Budget and Accounting Act of 1921, as amended (31 U.S.C. 54), has been further amended by the GAO Act of 1980 (P.L. 96-525) to provide the Comptroller General with a judicial enforcement authority to obtain access to certain Federal and non-Federal records. Paragraph (d) of Section 313 provides exemptions from that authority.

B. The procedures established by amended section 313 is as follows: If the GAO's initial efforts to gain access to the materials are not successful within a reasonable period of time, the Comptroller General may make a formal written request to the agency head, setting forth the authority and reasons for the request. The agency head has 20 days to respond and describe any materials withheld and the reasons therefor. Materials may be withheld only if the agency has obtained an exemption from the Director of the Office of Management and Budget or the President. 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 of 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. After 20 calendar days after filing the written report, the Comptroller General may seek an order in the United States District Court for the District of Columbia to compel the department to produce the material withheld.

1.3 Policy

A. Department requests for exemptions shall be transmitted to the Secretary who in turn may submit the request to the Director of OMB or to the President.

B. The bureau or office shall ensure that the submission to the Secretary is timely

and that the information submitted is accurate and complete.

C. All requests for an exemption shall be reviewed by and approved by the Solicitor or his designee prior to submission to the Secretary.

1.4 Action Requirements

A. The head of a bureau or office may initiate a request for an exemption from GAO's access to agency records if it is determined that:

(1) the requested materials fall within either of the two specified exemptions from disclosure under the Freedom of Information Act, (5 U.S.C. 552(b)(5) or 5 U.S.C. 552(b)(7); and

(2) disclosure of the requested material to the Comptroller General could reasonably be expected to substantially impair the operations of the Federal Government.

B. The bureau or office shall prepare the request for submission to either OMB or the President. If the request is addressed to the President rather than OMB, a copy of the request shall be included for submission to the OMB General Counsel's office by the agency.

C. If a request for an exemption is prepared for submission to OMB, the request shall be addressed to the Director, OMB (2 copies). The request is to state which exemption applies and explain in detail the agency's rationale for requesting the exemption (*i.e.*, why it fits the FOIA category and why disclosure to the GAO would substantially impair the operation of the Federal Government). The request shall include the materials requested by GAO, unless it would be unduly burdensome to provide them. The request should also include information on prior requests for exemption of the materials.

D. The bureau or office preparing the request for an exemption shall allow adequate time for the request to be submitted to OMB no later than the time at which the agency responds to GAO's initial written request.

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