

CHAPTER 8

RELEASE OF INFORMATION AND APPEARANCE OF WITNESSES

8-1. Scope of Section. This section sets forth procedures applicable to release of information and testimony of Corps of Engineers personnel in connection with litigation (also see Chapter 7, AR 27-40.) Requests for information in other situations will be handled under the Freedom of Information Act (FOIA) and the Privacy Act (5 U.S.C. 552a), as applicable. Questions concerning FOIA and Privacy Act issues should be addressed to CECC-T.

8-2. Requests from Private Parties. Requests for information will normally be processed following the procedures set out in the USACE FOIA Guidance Deskbook (hereinafter Deskbook), AR 25-55, and DoD Directive 5400.7R. If the material does not fall within a FOIA exemption, it should be released locally. If the records are classified, safeguarded, or are exempt from disclosure, the request should be forwarded, along with the documents exempt from release, to the appropriate Initial Denial Authority (IDA) with a recommendation that the request be denied in part or in full.

8-3. Restrictions on Release. It is Corps policy to comply with requests for access to or copies of records. Restrictions on the release of certain documents are prescribed by the Deskbook, AR 25-55, AR 340-21, and AR 27-40. The scope of these restrictions will be narrowly construed.

8-4. Requests from Other Federal Agencies. On occasion, another government agency may be furnished information or records not available to the public because they are exempt under FOIA. When another agency is given information which is considered to be exempt from public disclosure, that agency should be notified that the Corps considers the documents exempt, and that they should not be disclosed. The agency should be directed to forward all FOIA requests it receives for Corps records to the responsible office of counsel for review and a release determination.

8-5. Subpoenas and Court Orders. a. Orders or subpoenas issued by any Federal court for the production of documents will be promptly complied with in any suit involving the United States as a party. Compliance with orders in cases where the government is not a party will be handled under the guidelines set forth in AR 27-40, AR 25-55, and AR 340-21. If a subpoena requests classified information, the matter will be promptly referred to the Chief Counsel, ATTN: CECC-K, with a report which includes the following information: the case caption and brief summary of the parties and issues involved, the government's relationship, if any, to the parties making the request, a description of the document, information, or testimony sought, an opinion regarding the possible prejudice to the government's position if disclosure is allowed, and a recommendation about whether or not the information should be provided.

b. Pending instructions from the Chief Counsel, the official subpoenaed will appear in court and respectfully decline to produce records or give testimony as required by the subpoena, on the grounds that custody of all records is vested in the Secretary of the Army (10 U.S.C. 4831), and that disclosure of official information is prohibited by this regulation prior to express authorization from the Chief Counsel.

8-6. Justice Department Requests. All requests from attorneys with the Department of Justice or U.S. Attorneys Offices for information or assistance will be promptly honored, unless classified material is involved. Private counsel retained with the approval of the Chief Counsel, the Judge Advocate General, and the Attorney General to represent cost-plus-fixed-fee contractors in litigation will be given the same cooperation, as will private counsel representing the government under the Medical Care Recovery Act, 42 U.S.C. 2651.

8-7. Requests from Local Cooperating Agencies. In private litigation which involves obtaining or defending interests required for local flood protection works by local cooperating agencies, the United States has an interest in such litigation and will provide information, documents and personnel as needed to assist the local cooperating agency in these cases.

8-8. Testimony in Court. For instructions and restrictions relating to participation as a witness in court proceedings, see Chapter 7 of AR 27-40. District Counsels may authorize the appearance of Corps employees as fact witnesses or as expert witnesses on behalf of the United States in litigation where the government is a party in court proceedings within the same judicial district as the employee's office. Witness requests of an unusual nature, including private or local government requests for employees to testify as expert witnesses, should be discussed with CECC-K prior to authorizing an employee's appearance.

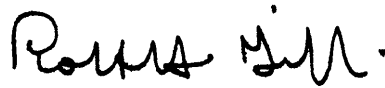
8-9. Authentication of Records for Court Use. Whenever copies of official documents are to be introduced as evidence in court, they may be authenticated under the Seal of the Department and the signature of the Secretary of the Army through the use of DA Form 4. (See page 8, AR 27-40). This makes the records admissible as originals, as provided for by 28 U.S.C. 1733. Unless exceptional circumstances are involved, it is contrary to the Chief Counsel's policy to furnish the originals of Corps records for court use. Appropriate copies of records may be submitted to the Army Correspondence and Records Center, Room 3D679, the Pentagon, for authentication, along with the certification of the actual custodian on DA Form 4. The Correspondence and Records Center will not reproduce copies of records. Since obtaining authentication is time-consuming, the requesting party should be asked to have the documents admitted in evidence by stipulation or by the use of certified true copies. Otherwise, unless a compelling interest of the United States is demonstrated, private party requests for authenticated records in litigation where the government is not a party will be denied.

8-10. Records for Use in Miller Act Cases, 40 U.S.C. 270a-e. The Miller Act provides that litigants or prospective litigants may apply to the Comptroller General for certified copies of the pertinent payment bond and prime contract. Whenever any person requests such documents, he or she will be provided with xerox copies of the documents, or advised of this provision and instructed to address a request for the records to the Comptroller General. Requests in connection with Miller Act cases for all information and documents other than those set forth above will be handled in accordance with paragraph 8-2 of this regulation.

ER 27-1-1
15 Sep 96

8-11. Cost of Reproducing Records. Whenever the request of a private person or firm for copies of official records is approved, the Division or District Commander involved will bill such person or firm for the cost of reproducing the records. The schedule of charges for search copying and certification of records is contained in AR 37-60. If the request for records has been made under the Freedom of Information Act then the search review and duplication costs as set out in AR 25-55 are applicable.

FOR THE COMMANDER:



ROBERT H. GRIFFIN
Colonel, Corps of Engineers
Chief of Staff

2 Appendices
(See Table of Contents)