

Investigation Manual

CHAPTER 12 - FILE MANAGEMENT, RETENTION AND RELEASE

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CHAPTER 12 - FILE MANAGEMENT, RETENTION AND RELEASE

1201 **INTRODUCTION:** Proper management, retention, and release of IG investigative files is an integral part of the IG function. Good file management and retention practices help ensure the completeness and accuracy of an investigation during its performance, and permit the documentation of completeness and accuracy upon review after the investigation is completed. Good release practices help ensure appropriate access for official purposes. They also permit individual and public access sufficient to ensure accuracy and inform the public while preventing undue embarrassment to complainants, subjects, and others who participated in the investigation. Return to [Chapter Table of Contents](#).

1202 **OVERVIEW:** This chapter provides general information on file management, retention, and release. It provides advice as to the materials that should be retained in case files during, and after completion of, the investigation. It discusses DoD and DoN retention requirements. It reviews DoN and NAVINSGEN policy and practice on the release of information from IG investigative files for official purposes and in response to Freedom of Information Act (FOIA) and Privacy Act (PA) requests. It should be read in conjunction with

complementary materials in Chapters 3, 4, and 5. Return to [Chapter Table of Contents](#).

1203 CASE FILE MANAGEMENT DURING THE INVESTIGATION: Since the purpose of an IG investigation is to gather facts sufficient to enable responsible authorities to take appropriate action, the investigator usually collects or creates many documents during the course of an investigation. These include, but are not limited to: complaints; tasking letters; legal opinions; investigative and interview plans; contact and witness lists; investigator notes; documents indicating supervisory and chop chain reviews; routing slips; notes of phone conversations; investigator time, travel and expense reports; results of interview reports (ROIs); complainant, witness and subject statements; memos; letters; contracts; laws, regulations, directives, instructions and policy statements; organization manuals; the investigative report; and, of course, drafts of many of the foregoing documents.

Some of the documents collected during an investigation eventually prove to have limited value. Extraneous documents only clutter up the file, and may prove harmful if their release outside the IG chain would cause unnecessary embarrassment. The key to good file management then, is to eliminate extraneous material while ensuring that all documents necessary to conduct and document a complete and thorough investigation are maintained in such a manner as to be readily accessible on short notice.

Documents must be organized in a manner that enables investigators to locate key documents quickly and easily, and facilitates supervisory review. Beyond that, these materials should be organized so that another investigator called upon to take over the case in an emergency can quickly determine what has been done to date, and what still remains to be done to complete the investigation. No single method of organization is best in all circumstances. However, organization of similar materials into logical groupings, which are then bound together in properly indexed folders or ring binders, with the location of the investigative plan and contact list clearly identified, usually is the minimum necessary to permit supervisory review and case reassignment. Drafts, whether kept with the corresponding final document or in a separate file area reserved for drafts, should be clearly labeled and dated. Hard copies of documents and drafts created by the investigator on a computer should include the computer file name. Floppy disk backups of such documents should be maintained in the case file, or the case file should state where the floppy is kept in the investigator's work area. Of course, investigators must adhere to good computer file backup procedures in order to ensure their work is preserved in the event of a computer failure.

As an investigation progresses, it occasionally becomes evident to the investigator that some documents that have been collected or created are no longer pertinent. However, until the investigation is completed and accepted by the tasking and responsible authorities, it is impossible to be certain about the need for other documents. Therefore, as a rule of thumb, if there is any doubt

as to the continuing need for a document, it should be retained. Drafts of documents created by the investigator, however, should be retained only if useful to document their contents, as, for example, to establish that a certain line of reasoning was considered, then discarded. Similarly, drafts of interviewee statements need be retained only if it is important to document the changes made by the interviewee. Of course, when the interviewee and the investigator disagree as to what was said during the interview, it is imperative that the investigator keep all documents that reflect both positions.

The investigator's original notes taken during interviews must be retained until the investigation is accepted by the tasking and responsible authorities, and it is certain that no criminal prosecution will be undertaken as a result of the investigation. When in doubt, retain the notes.

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1204 CASE FILE MANAGEMENT UPON COMPLETION OF THE

INVESTIGATION: When the investigation has been completed and accepted by the tasking and responsible authorities, the file should be reviewed to eliminate unnecessary documents in preparation for storage. Unless criminal prosecution or disciplinary action is to result, only those documents necessary to establish the scope and completeness of the investigation need be retained in the file. All extraneous materials, including most drafts, should be removed from the file. At this point, when in doubt, throw it out.

Documents that should be retained include: the complaint and tasking or forwarding letters; the completed investigation report and all endorsements or other documents indicating acceptance of the report and action taken as a result (including disciplinary action, if any); the investigative plan and any contact, witness or notification lists; documents collected during the investigation that are pertinent to the facts or findings in the investigative report, especially those that are referred to in the investigative report (but don't retain readily available published instructions); sworn and unsworn statements of all persons interviewed; legal opinions; the investigator's interview notes and ROIs for those interviewees that did not provide written statements; and documents that establish whether the complainant and subject were notified of the results and/or provided a copy of the investigative report.

Drafts of documents should be destroyed in most cases. They should be retained only if necessary to document their contents, as, for example, to establish that a certain line of reasoning was considered, then discarded. Investigator notes and ROIs created for those interviewees who provided sworn or unsworn written statements may be destroyed when there will be no criminal prosecution, the interviewee statement contains all pertinent information relied upon to write the investigative report, and there is no additional or inconsistent information in the notes or results of interview reports that the investigator relied upon when writing the investigative report. Conversely, when the investigator's notes and ROIs contain information that contradicts the interviewee's

statement, or information not included in that statement, they should be retained if the investigative report makes use of that contradictory or additional information.

In most cases, the investigator collects many documents from the subject command, such as command instructions, policy statements, telephone logs and organizational manuals, that are useful during the investigation but have no value thereafter (unless retained as part of a separate "library" of similar documents for reference in future cases). Other documents the investigator may collect or generate include travel and expense records, maps, directions, notes of phone calls not pertinent to the investigative report, time logs, and the like. These extraneous documents should be removed from the file.

Once the investigator has reviewed the file and removed unnecessary materials, the file must then be maintained within the files of a DoN IG organization within the tasking chain. Investigators who do not work within such offices should forward the file up the tasking chain and should not retain a copy. The lowest echelon DoN IG organization may retain the file, but some IG organizations may wish to retain files at a higher level, such as the Echelon III IG office.

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1205 DODIG RECORD RETENTION REQUIREMENTS: When the DoDIG tasks a hotline investigation, it requires the investigative organization to keep the file for two years after the investigation is completed. Thereafter, the investigative organization is free to dispose of all material in the file in accordance with its own record retention requirements. Return to [Chapter Table of Contents](#).

1206 DON RECORD RETENTION REQUIREMENTS: Within the DoN, records must be maintained in accordance with SECNAVINST 5212.5C, "Navy and Marine Corps Records Disposition Manual." As currently written, this instruction requires that NAVINSGEN investigations be maintained permanently, although they may be sent to archives for storage. Investigations tasked by NAVINSGEN are subject to the same retention requirement. SECNAVINST 5212.5C is also applicable to DoDIG tasked investigations, even though the DoDIG would permit the destruction of files pertaining to them after two years. NAVINSGEN practice is to retain files in its offices for three years after completion of an investigation, then send them to a federal records center. NAVINSGEN recommends other DoN IG organizations follow the same practice. Where space constraints require it, files may be sent to storage two years after the investigation is completed and accepted. Return to [Chapter Table of Contents](#).

1207 RELEASE OF CASE FILES FOR OFFICIAL PURPOSES: An IG investigation is done for an official purpose, and the documents obtained and created during the investigation are available to those who need them for that reason. The following matters should be considered in deciding when, and to whom, to release information in case files for official purposes.

During the course of an investigation, information contained in the case file should not be made available to personnel outside of the DoN IG chain except for the purpose of providing status reports and briefings to tasking and responsible authorities. In particular, information concerning the identity of complainants and witnesses should not be provided without their express permission.

Once the investigation is completed, however, certain information in the case file may be provided to those who have an official need to see and use it, except for information obtained subject to an express grant of confidentiality. Persons who have a need to know at that point include endorsing, tasking and responsible authorities, and their legal advisors. They may have access to all information in the file, except for that subject to an express grant of confidentiality. Subjects and subject commands may be provided a copy of the investigative report, with the names of interviewees redacted, at the discretion of the investigating organization or the responsible authority. In most cases, subjects and subject commands do not have a need to review underlying documentation, such as witness statements, unless additional action is to be taken, and they should not be given access to them.

Should the responsible authority decide to undertake disciplinary action, the subject usually has due process rights that permit access to most, if not all, of the information in the investigative file, including the identity of witnesses, as part of the disciplinary process. However, the identity of the complainant (as the complainant, not as a witness) and anyone provided an express grant of confidentiality should not be provided without their consent, absent advice from counsel and the consent of NAVINSGEN.

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1208 RELEASE OF CASE FILES PURSUANT TO FOIA AND PA REQUESTS:

The PA permits people to have access to government records that contain information about them in order to know what the records contain, and to seek the correction of erroneous information. The information must be "personal" in nature, must be maintained in a "system of records," and must be routinely retrieved by use of personal identifiers, such as names or social security numbers, before a person may invoke the PA (instead of the FOIA) to obtain access to the information. The FOIA is a general release statute that may be invoked by virtually anyone, whether or not the information they seek is about them. Both the PA and the FOIA exempt certain information from release. Current DoD and DoN policy states that persons requesting information about themselves are entitled to have their request reviewed under both the PA and the FOIA, and that the information be released under whichever standard would result in the greater release of information.

Case files maintained in an IG organization constitute a "system of records," and much of the information in IG files is considered "personal" in nature. NAVINSGEN logs case files under the names of complainants and subjects,

but not witnesses. Thus, for cases investigated or tasked by NAVINSGEN, complainants and subjects may invoke the PA, but witnesses (and of course, members of the public in general) may not. Complainants and subjects are entitled to have their requests reviewed under PA standards, even if they do not specifically refer to it, or if they cite the FOIA in their request. The rights of people making requests to other DoN IG organizations will depend on the extent to which they comply with DoN Federal Register Notice N04385-1, discussed below.

DoN IG organizations that maintain their records consistent with DoN Federal Register Notice N04385-1, which covers IG reports, may invoke PA exemption k2. By virtue of that notice, until such time as subjects or complainants have been denied a "right, privilege or benefit," their rights to obtain information under the PA are, in practice, no greater than the rights of a member of the public who makes a FOIA request. However, once a subject has been denied a "right, privilege or benefit" (the likely result of disciplinary action), then the subject becomes entitled to review everything in the investigative file relied upon to take the action except for information provided by, or revealing the identity of, someone who was given an express grant of confidentiality. Note that subjects usually may obtain the same information (and perhaps also the identity of a confidential source) before disciplinary action is effected by invoking the due process rights associated with the disciplinary action. Notice N04385-1 is reproduced in the appendix. CAUTION: If a DoN IG organization is not in compliance with Notice N04385-1 and does not have a similar notice applicable to it, a subject who has been denied a "right, privilege or benefit" may obtain the identity of, and information provided by, sources who were provided an express grant of confidentiality. Therefore, all DoN IG organizations shall ensure they are in compliance with Notice N04385-1 or a similar notice specifically applicable to them.

Under the FOIA, the rights of a subject and complainant are no greater than third parties. The FOIA enables a person to obtain information in government records unless there is an exemption that may be involved in order to withhold the information and the government decides to exercise the exemption. Under previous administrations, information was usually withheld if an exemption applied. Thus, NAVINSGEN routinely redacted (deleted) opinions, conclusions, recommendations, identities, chop chains and routing slips, invoking FOIA exemptions b(2), b(5), and b(7). However, the current administration has adopted a more release-oriented policy that dictates the invocation of exemptions only in those cases where the agency reasonably foresees that disclosure would be harmful to a governmental interest. To implement this policy, NAVINSGEN now routinely releases all information in investigation reports except for the names and other identifying information of people mentioned in the reports. When other information in the files is requested, chop chains and routing slips are routinely released.

Note, however, NAVINSGEN takes the position that it is not appropriate to release any information under the FOIA until an investigation has been completed. NAVINSGEN believes that the release of information from the case

file while the investigation is still pending would impede the investigation and therefore be harmful to the DoN. Absent unusual circumstances where the public interest would be served by an earlier release, the investigation is not considered complete for FOIA purposes until final administrative action (including, when appropriate, disciplinary action) has been taken. NAVINSGEN serves as the release and initial denial authority for all investigations it has performed itself or tasked to other DoN IG organizations. This includes DoDIG and Navy hotline cases tasked through NAVINSGEN. All cases originating with a complaint to the hotline of another DoN organization are that organization's responsibility. Thus, for example, the FOIA release of a NAVSEA hotline complaint investigated by the NAVSEA IG or someone tasked by the NAVSEA IG will be processed by the release/initial denial authorities for NAVSEA. However, since a complaint to the NAVSEA hotline that concerns a NAVSEA SES employee must be referred to NAVINSGEN for investigation, NAVINSGEN will act as the release/initial denial authority for FOIA requests concerning that complaint.

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1209 RELEASE OF CASE FILES PURSUANT TO JUDICIAL ORDER: Federal courts and federal quasi-judicial or administrative tribunals such as the MSPB have the authority to issue orders requiring the production of documents. NAVINSGEN and other DoN IG organizations must honor those orders in most cases. This is a principal reason why it is impossible to promise complete confidentiality to complainants and witnesses. Moreover, most judicial and administrative records and proceedings are open to the public, so that a document provided to a court becomes available to anyone. An OGC or JAGC attorney should be consulted before the release of information to a court or administrative tribunal. In many cases it is possible to obtain a protective order that will limit the use of IG documents to that necessary for the proceeding in order to preclude their release to the general public. Return to [Chapter Table of Contents](#).