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## FOIA SOP

### Congressional Records

4 March 2009

This SOP explains the steps for processing FOIA requests that contain Congressional Records that are responsive to the request.

1. Because Congress is not an Agency of the U.S. Government, as defined by the FOIA, it is not subject to the FOIA. Guidance from the Office of General Counsel indicates, however, that if we have a document in our possession, we should process the records. Congressional records responsive to a FOIA request should be processed as NSA records, as long as they do not contain a Congressional release caveat. Release caveats may be similar to those listed below:

“NOT RELEASABLE WITHOUT PRIOR APPROVAL BY (*name of committee*), coordination of the release of the records must be made with the originator”

“Duplication or copying of this transcript by photographic, electrostatic, or other facsimile means is NOT AUTHORIZED. Copies available, when authorized by Committee, only through Official Reporters.”

2. Many Congressional documents that we may have in our possession will have been created for dissemination to the public. For those documents, and any others that do not contain a release caveat, treat the documents as NSA documents and review them for any NSA equities. Follow the normal guidelines for consulting with other agencies, as necessary, if the documents contain another agency's equities. Once a final release determination is made, either withhold the document in full, or release the document in whole or in part to the requester.

3. If the Congressional document contains a release caveat, we must receive the appropriate Congressional organization's approval prior to release of the document. Coordination/referral of the document is not necessary if NSA requires the document/information be protected in its entirety for our own reasons (i.e., release of the information would cause harm to this Agency's mission/activities). We will use our exemptions and rationale to support the withholding, and we will prepare a declaration for Court if litigated justifying the redactions.

4. If NSA does not plan to protect the document/information in its entirety, and it contains a Congressional release caveat, we must receive the appropriate Congressional organization's approval prior to release of the document. Prepare a review memo (template called FOIA\_Congressional\_review.memo) for the Legislative Affairs Office (LAO) FOIA POC and provide a sealed copy of the document as we intend to release it to the public. Advise LAO which committee originated the document, if known. The LAO POC will coordinate with Congress, and respond to us once release approval (or denial) is received. (Contractor reviewers will reassign their case to the Government Releaser to get the document sealed. The Government Releaser will print the memo and document for LAO and reassign the case back to the contractor for suspense.)

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Approved for Release by NSA on  
04-21-2011, FOIA Case # 60859

5. If Congress approves release of the document, prepare the appropriate response to the requester (granted in full or partial denial).
6. If Congress does not authorize release of the document, prepare a full denial letter that indicates our actions on the document (e.g., we identified some classified or other information that must be withheld pursuant to certain FOIA exemptions). Add the following language (found in the paragraph template named Congressional\_para):

“We are not authorized to release this document without the approval of the U.S. Senate (*or U.S. House of Representatives*). We have coordinated with the (name appropriate Congressional committee or organization), and they have not agreed to release the document.”

Do not provide appeal rights for the information we are withholding, since ultimately any decision we have made is superseded by Congress's actions. There are no appeal rights for the Congressional action.

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