**DEPARTMENT OF DEFENSE**
**DIRECTORATE FOR FREEDOM OF INFORMATION AND SECURITY REVIEW**
**1155 DEFENSE PENTAGON**
**WASHINGTON, DC 20301-1155**    **2 5 MAR 2003**

03-CORR-017

MEMORANDUM FOR: SEE DISTRIBUTION

Subject: Freedom of Information Act (FOIA) Requests for Critical Infrastructure
Information (CII)

The Homeland Security Act of 2002, Public Law 107-296, established the
Department of Homeland Security (DHS). A provision within the legislation established
a new Exemption 3 Statute for applicable protection of CII. This Exemption 3 statute
applies only to DHS and until further notice, **may not** be used to exempt CII maintained
by the Department of Defense (DoD). Further guidance on the Exemption 3 statute was
distributed by the Department of Justice (Office Of Information and Privacy) (DOJ
(OIP)) on the Internet on FOIA Post at
http://www.usdoj.gov/oip/foiapost/2003foiapost4.htm.

The DoD has recognized the need to protect voluntarily submitted CII when these
records are requested under the FOIA. Efforts to obtain an Exemption 3 statute unique to
DoD are ongoing. Until such time as an Exemption 3 statute for CII that includes the
DoD is passed, the following guidance for exempting CII under the provisions of the
FOIA is provided:

   a. Exemption (b)(1) may be used to exempt classified CII that is
      determined to be currently and properly classified after review.

   b. Exemption (b)(2)High may be used to exempt applicable unclassified
      CII. Recent guidance issued by DOJ(OIP) concerning the use of the
      (b)(2) High exemption for CII may be found on FOIA Post at
      http://www.usdoj.gov/oip/foiapost/2001foiapost19.htm.

   c. Exemption (b)(4) may be used to exempt applicable unclassified CII
      that is voluntarily submitted and the release of which would cause
      competitive harm.

   d. Exemptions (b)(7)(E) and (b)(7)(F) may be used to exempt applicable
      law enforcement information.

Additional guidance or changes will be forwarded as it becomes available.

H.J. McIntyre
Director

Distribution:

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Defense Intelligence Agency
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Defense Threat Reduction Agency
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National Security Agency/Central Security Service
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National Reconnaissance Office
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14675 Lee Road
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