

Department of Transportation

Office of the Secretary

Washington, D.C.

ORDER

DOT 1640.1

12-27-71

SUBJECT: CONTROL AND PROTECTION OF "FOR OFFICIAL USE ONLY" INFORMATION

1. PURPOSE. To establish provisions to identify and protect from uncontrolled release unclassified information which should not be given general circulation. These provisions relate to marking, handling, and safeguarding of such information, but do not affect its availability to the public, which is determined by the Freedom of Information Act (section 552, Title 5, United States Code) and references a. and b.
2. SCOPE. This order applies to the Office of the Secretary (OST) and the operating administrations.
3. REFERENCES.
 - a. Part 7, Department of Transportation Regulations.
 - b. DOT Order 1210.1A, Public Availability of Information.
 - c. DOT Order 1600.22, Safeguarding Classified Information.
4. BACKGROUND. The Freedom of Information Act, section 552, Title 5, U.S.C. (originally enacted as a revision of section 3 of the Administrative Procedure Act by Public Law 89-487) provides that all government information shall be available to the public, except information authorized to be withheld by section 552(b). References a. and b., implementing the Freedom of Information Act, establish procedures to provide public access to records of the Department. In addition, Subpart F of reference a. identifies the types of information which may be exempt from public disclosure.
5. POLICY.
 - a. It is the policy of the Department of Transportation to make information available to the public to the greatest extent possible, in keeping with the requirements and the spirit of Section 552, Title 5, U.S.C.

DISTRIBUTION: All Secretarial Offices
All Operating Administrations
National Transportation Safety Board (info)

OPI: Office of
Investigations
and Security

- b. Unclassified information which, for a significant reason should not be given general circulation, shall be protected against uncontrolled release at the time of its origination or receipt. Such information may or may not be exempt from general public disclosure under section 552(b) of Title 5, U.S.C.
 - c. Information classified pursuant to the requirements of Executive Order 10501, as amended, "Safeguarding Official Information in the Interests of the Defense of the United States," which is one of the exemptions from public disclosure authorized by section 552(b) of Title 5, U.S.C., is identified and handled in accordance with the provisions of reference c.
6. FOR OFFICIAL USE ONLY (FOUO). Unclassified information which is to be protected against uncontrolled release in accordance with paragraph 5(b), is considered to be FOR OFFICIAL USE ONLY and this term is prescribed for use within the Department to signify such information. FOR OFFICIAL USE ONLY is not a classification term. It denotes unclassified information which requires protection against indiscriminate handling.
 7. DESIGNATING AUTHORITIES.
 - a. Heads of administrations shall identify those officials who have authority to determine initially what information originating under their cognizance or supervision requires protection against uncontrolled disclosure. Such delegation of authority shall be limited to the greatest possible extent consistent with the orderly transaction of business. Within the Office of the Secretary (OST), designating authorities are office directors and above.
 - b. In addition, designating authorities are responsible to assure that personnel under their direction are aware of precisely what information requires protection against uncontrolled disclosure. Documents or other material containing information of this nature which they originate shall be marked FOUO (paragraph 9) when dissemination is likely to other offices which may not otherwise recognize the privileged nature of the information.
 8. DISSEMINATION.
 - a. Information which qualifies for the designation FOR OFFICIAL USE ONLY shall be safeguarded from disclosure irrespective of whether the material containing the information is physically marked with the FOUO term or not.

- b. The phrase "safeguarded from disclosure" includes precautions against oral disclosure during discussions, prevention of visual access to the information and precautions against unauthorized release of documents, either gratuitously or in response to a specific request for information.
- c. Requests from the public for access to FOUO information shall not be honored until the office originating the information or higher authority is consulted and a determination of releasability is made. A final decision to deny the request shall be made only in accordance with the provisions of references a. and b. In this regard, the authority for original designation of information as FOUO, paragraph 7 above, does not convey authority to make a final decision to deny a request for the information.
- d. The designation FOUO, however, does not prohibit release outside the Department for official purposes. When appropriate for official purposes, it may be released to other departments and agencies; to the Congress; to the Judiciary; to State and local governments; to foreign governments; and to private persons or firms when acting as contractors, grantees, consultants, or advisors to the Department. Prior to such dissemination, the information shall be reviewed specifically to determine if it is essential to retain the data in a protected status. If it is essential, persons who are given oral, visual or written access to the information shall be advised of the restrictions imposed on its handling, and documents containing the information which are released will be marked FOR OFFICIAL USE ONLY. The FOUO marking is adequate notification of the protection required for releases within the Executive Branch.

9. IDENTIFICATION AND MARKING.

- a. DOT-originated material which contains information which requires protection against uncontrolled release shall be marked FOR OFFICIAL USE ONLY when necessary to ensure that all persons having access to the information are aware that it requires such protection. The marking FOR OFFICIAL USE ONLY shall include the notation in smaller print: "Public availability to be determined under 5 U.S.C. 552". Such marking shall be placed at the bottom of the outer cover, if any, the first page, and each succeeding page which contains FOUO information.

- b. File folders and documents need not be marked FOR OFFICIAL USE ONLY when the material (1) is clearly identifiable as falling within a protected category, such as personnel and medical files, bids and proposals, and (2) is covered by regulations specifying what information may and may not be released publicly.
- c. When a document containing FOUO information is disseminated or transmitted by a forwarding memorandum or letter, the first page of the forwarding correspondence shall have an appropriate notation, such as FOR OFFICIAL USE ONLY ATTACHED, to call attention to the presence of FOUO information in the accompanying documents. If the forwarding correspondence by itself contains FOUO information, it shall be marked as prescribed in subparagraph 9a above.
- d. On material other than ordinary paper documents, such as photographs, tapes, etc., the term shall be applied in a conspicuous manner so as to identify the nature of the information.
- e. When necessary to assure protection, preliminary drafts, working papers, etc. shall be marked with the FOUO designation.
- f. If a document contains classified and FOUO information, a page containing both types of information shall be marked with the appropriate classification marking at the top and bottom of that page, but any page containing only FOUO information shall be marked FOR OFFICIAL USE ONLY at the bottom of that page. When necessary to assure proper understanding, the FOUO marking should also be applied to paragraphs which contain FOUO information and do not contain classified information.
- g. When information is designated FOUO because of a time factor, the designating authority shall indicate on the document a date or event on or after which the information is no longer restricted. When a predetermined removal of the designation is not possible, the FOUO limitation shall continue indefinitely until action is taken to change the designation.
- h. In every case, it is incumbent upon the designating authority, and any higher authority, to terminate the FOUO designation as soon as the information no longer requires protection. Whenever the FOUO designation is terminated by such action, all holders shall be notified insofar as practicable and the FOUO marking shall be removed or effaced from the pertinent documents. For a document in bulk storage, the marking shall be removed when the document is taken from storage.

- i. This order provides for the marking and identification of documents which at the time of origination appear to require protection from uncontrolled release. It permits, but does not require, the marking of documents already in existence.
10. ACCOUNTABILITY AND PERSONNEL CLEARANCES. Receipts and other accountability records are not required for the control of FOUO material and such material shall not flow through the classified control points for recordation. (This provision does not preclude normal correspondence controls which may be applicable.) Personnel security clearances are not required for access to FOUO information.
11. CUSTODY AND STORAGE.
 - a. Persons who have custody of material designated FOUO, whether marked or not, shall exercise due caution to assure that the information is not made available to individuals who have no requirement for it.
 - b. During nonduty hours FOUO material shall be kept in "out-of-sight" storage, provided access to the building or area is controlled by a guard force. In buildings without guard protection and access controls, the material shall be stored in locked desks or locked file cabinets.
12. REPRODUCTION. Material marked FOR OFFICIAL USE ONLY may be reproduced in quantities necessary for the orderly transaction of business. Authorization for reproduction is not required unless a document itself contains a specific prohibition against reproduction. Reproduced copies shall bear the same markings as the original.
13. DESTRUCTION. FOUO material which does not have to be retained pursuant to the provisions of the Records Disposal Act of 1945, may be destroyed by tearing into small pieces and assimilating with other waste material. In instances of volume or unusual sensitivity the material shall be destroyed in the same manner of classified waste, such as by burning or pulping.
14. TRANSMISSION.
 - a. FOR OFFICIAL USE ONLY designated material may be transmitted outside an activity by U.S. Postal first-class mail or regular parcel post in a single opaque envelope or wrapping, properly sealed and

addressed. Such material may be transmitted within an activity in such a manner so as to preclude disclosure of the contents. In this event, the U. S. Government Messenger Envelope, SF No. 65, will suffice.

- b. Electrically transmitted messages containing FOR OFFICIAL USE ONLY information shall have the term FOUO at the beginning of the text. Such messages shall be handled in accordance with EFTO (Encryption for Transmission Only) procedures. Commercial facilities shall not be used to transmit FOUO messages.
 - c. FOUO information may be discussed over the telephone. In view of the ease with which information can be compromised by the use of the telephone, however, officials should consider the sensitivity of the information and exercise discretion in using this transmission medium.
15. ADDITIONAL CONTROLS. The safeguards prescribed herein are minimum. All FOUO information is not equally significant. Some is more sensitive than others. Further, the importance of a specific FOUO item may vary in relation to time or as other developments may affect it. Accordingly, officials having primary cognizance of FOUO information should consider affording a higher degree of protection to individual FOUO items when the sensitivity of the item would warrant more positive safeguards. Such measures should be selective and could include extremely limited dissemination, supplemental physical controls, and/or technical security services.
16. MATERIAL FROM OTHER DEPARTMENTS. Except as noted in paragraph 17 below, unclassified material furnished to DOT from other departments and agencies which is marked FOR OFFICIAL USE ONLY, or which carries some other term which denotes a privileged nature of the information, and information received in confidence from private sources, shall be handled in accordance with the provisions of references a. and b. and this order. DOT-originated material which contains extracts from or is in response to materials of this nature shall be marked FOR OFFICIAL USE ONLY even though the incoming material has a different marking.
17. DEPARTMENT OF STATE MATERIAL. Some documents originated by the Department of State are marked LIMITED OFFICIAL USE. These documents shall be handled as FOUO documents, except as follows:

- a. Information designated LIMITED OFFICIAL USE may not be released to foreign nationals or their representatives without the consent of the Department of State.
- b. Offices originating messages to be electrically transmitted which contain LIMITED OFFICIAL USE information shall mark the message with this term. DOT message centers transmitting the messages shall place the words CONFIDENTIAL followed by LIMITED OFFICIAL USE at the beginning of the text. The receiving message center shall delete the word CONFIDENTIAL from the message before distributing it outside the message center. LIMITED OFFICIAL USE messages must be transmitted by secured means.

18. UNAUTHORIZED DISCLOSURE.

- a. Leaks of sensitive information and the premature disclosure of information which may give recipients an opportunity for advantage in the marketplace are prejudicial to the proper administration of the Department and to individuals who may be affected adversely and are unfair to the public.
- b. Accordingly, the Assistant Secretary for Administration for the Office of the Secretary, and the head of each of the operating administrations for the administration, shall assure that prompt and stringent administrative action is taken against any Departmental official or employee, at any level, determined to have been responsible for any release or disclosure of FOUO information, except as authorized by references a. and b. and this order.
- c. Where a violation of statutes may be involved, the appropriate official shall assure that the matter also is referred promptly to the Department of Justice.
- d. Constant vigilance is required:
 - (1) To assure that sensitive information is identified; and,
 - (2) that personnel are familiar with the provisions for controlling the information and are aware of the importance of maintaining its integrity.

FOR THE SECRETARY OF TRANSPORTATION:



William S. Heffelfinger
Assistant Secretary
Administration