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10 July 2009

**DISPOSITION MEMORANDUM**

**SUBJECT:** (U) Anonymous Freedom of Information Act Concerns

**CASE:** 2008-9117-IG

**INTRODUCTION:**

1. (U//~~AIU~~) On 16 December 2008, the Office of Inspector General (OIG) received an allegation via [redacted] (b)(3) CIAAct that there were problems with the way Freedom of Information Act (FOIA) and Privacy Act (PA) requests for information were being handled by the Agency. The anonymous allegation stated that several "missteps" had occurred and the Agency had lost a court case (unspecified) as a result of the situation.

[redacted]

The allegation also stated that the way the information was being handled potentially violated Agency policy and federal law and requested OIG look into the matter.

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**PROCEDURES AND RESOURCES:**

2. (U//~~AIU~~) OIG interviewed [redacted] (b)(3) CIAAct

[redacted] (b)(6)  
[redacted] (b)(7)(c)

[redacted] (b)(3) CIAAct  
[redacted] (b)(6)  
[redacted] (b)(7)(c) OIG interviewed [redacted]

In addition, OIG conducted interviews with [redacted]

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[redacted] (b)(6)  
[redacted] (b)(7)(c) OIG interviewed [redacted]

OIG researched Title 5 U.S.C. § 552 (Public information; agency rules, opinions,

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orders, records, and proceedings), Title 5 U.S.C. § 552a (Records maintained on individuals), Title 50 U.S.C. § 435 (Declassification Act of 2000), and Title 50 U.S.C. § 431 (Operational files of the Central Intelligence Agency). OIG reviewed Agency Regulations (AR) 70-1, Information Management Program and AR 70-5, Declassification and Release.

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**FINDINGS:**

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3. (U//~~AIUO~~) Interviewees [redacted] all stated that the lawsuit described in the allegation seemed to describe a lawsuit filed by the National Security Archives (NSA) against the Agency. [redacted] stated that the lawsuit basically concerned whether or not the NSA should be considered a media organization, and which rules should apply regarding the fees the NSA had to pay for its requests. [redacted] said the Agency has both reversed its position on its own initiative, and had its position reversed by the court several times, which has caused great confusion within CIO. [redacted] explained that as a result of the most recent ruling, the NSA requests for information are being screened before re[redacted]

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4. (U//~~AIUO~~) [redacted] stated [redacted] IRRG Officers are assigned to work on the NSA cases as they come into FOIA, the same as any other case.<sup>1</sup> [redacted] stated the same, although he indicated that PA receives very few requests for information from the NSA. According to [redacted] the added layer of review by [redacted] has created a delay in the release of the NSA requests. [redacted] stated that no requests from the NSA were approved for release between December 2008 and March 2009 [redacted] begin releasing the requests to the NSA without waiting for [redacted] review as of 1 March 2009.

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5. (U//~~AIUO~~) Of the staff officers interviewed about their knowledge of the backlog of cases and possible reasons, [redacted] [redacted] indicated they had no knowledge of the NSA cases or any other cases being handled in a different manner. They stated there were delays with certain types of requests, but did not tie the delays to the

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<sup>1</sup> (U//~~AIUO~~) Within Freedom of Information Act and Privacy Act, Information Review and Release Officers are known as Case Managers.

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[redacted] reviews being conducted on the NSA requests. [redacted]  
[redacted] all indicated varying levels of knowledge regarding the  
lawsuit, the IRRG's ongoing difficulties with requests for information by  
the NSA and [redacted] review that resulted in the delay in releasing any  
information to the NSA. [redacted] all stressed in their  
OIG interviews that everyone in their group, division and branch,  
respectively, was aware of the situation with the NSA and knew that the  
backlog in releasing the cases was because of [redacted] review.

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6. (U//~~ATUO~~) [redacted] cited complex and/or very old  
requests as being exceptions to the first in, first out policy in FOIA and PA.  
They both indicated, however, that no lawsuits have been filed in their  
tenures regarding the timeliness of requests that have cost the Agency  
court fees in the amount close to the NSA settlement. [redacted]  
stated that the circumstances of the allegation did not seem to fit the  
scenario of ordinary complex or old requests, but appeared to match the  
circumstances of the NSA cases.

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**CONCLUSIONS:**

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7. (U//~~ATUO~~) The anonymous allegation sent to OIG did not  
provide specific identifying data to immediately enable OIG to identify the  
complaint as relating to the NSA litigation. However, all individuals in  
supervisory positions stated their belief that the complaint referenced the  
ongoing difficulties fulfilling requests for information by the NSA. Four of  
seven staff officers interviewed were aware that requests from the NSA  
were treated differently than other requests. These officers stated that he  
or she had either first or second hand knowledge of the lawsuit and  
subsequent [redacted] review of the NSA cases, which resulted in a  
backlog.

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8. (U//~~ATUO~~) Receipt of this allegation in OIG predated [redacted]  
decision to release the NSA cases without [redacted] review, thus  
alleviating the backlog. OIG found no information to support the  
allegation of deliberate malfeasance or dereliction of duty in processing the  
FOIA or PA requests for information. The only regulatory and statutory  
violation is FOIA and PA's inability to process a large majority of cases  
within the 20-day mandated timeframe. This violation was readily

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acknowledged by all witnesses and appears to be a systemic problem with the process of information review and release as opposed to mismanagement by individual officers.

9. (U) There is no further action for OIG in this matter. This case is closed in OIG.

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Special Agent

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Supervisory Special Agent

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