FOUO Designation and Marking

Excerpted from DoDM 5200.01-V4

2. **FOUO INFORMATION**

   a. **Description.** FOUO is a dissemination control applied by the Department of Defense to unclassified information when disclosure to the public of that particular record, or portion thereof, would reasonably be expected to cause a foreseeable harm to an interest protected by one or more of FOIA Exemptions 2 through 9. The FOIA specifies nine exemptions.

   (1) **Exemption 1.** Information that is currently and properly classified.

   (2) **Exemption 2.** Information that pertains solely to the internal rules and practices of the agency that, if released, would allow circumvention of an agency rule, policy, or statute, thereby impeding the agency in the conduct of its mission.

   (3) **Exemption 3.** Information specifically exempted by a statute establishing particular criteria for withholding. The language of the statute must clearly state that the information will not be disclosed.

   (4) **Exemption 4.** Information such as trade secrets and commercial or financial information obtained from a company on a privileged or confidential basis that, if released, would result in competitive harm to the company, impair the Government’s ability to obtain like information in the future, or impair the Government’s interest in compliance with program effectiveness.

   (5) **Exemption 5.** Inter- or intra-agency memorandums or letters containing information considered privileged in civil litigation. The most common privilege is the deliberative process privilege, which concerns documents that are part of the decision-making process and contain subjective evaluations, opinions, and recommendations. Other common privileges are the attorney-client and attorney work product privileges.

   (6) **Exemption 6.** Information, the release of which would reasonably be expected to constitute a clearly unwarranted invasion of the personal privacy of individuals.
(7) **Exemption 7.** Records or information compiled for law enforcement purposes that:

(a) Could reasonably be expected to interfere with law enforcement proceedings.

(b) Would deprive a person of a right to a fair trial or impartial adjudication.

(c) Could reasonably be expected to constitute an unwarranted invasion of the personal privacy of others.

(d) Disclose the identity of a confidential source.

(e) Disclose investigative techniques and procedures.

(f) Could reasonably be expected to endanger the life or physical safety of any individual.

(8) **Exemption 8.** Certain records of agencies responsible for supervision of financial institutions.

(9) **Exemption 9.** Geological and geophysical information (including maps) concerning wells.

b. **Application**

(1) It is the responsibility of the document’s originator to determine at origination whether the information may qualify for FOUO status and to ensure markings are applied as required. Further details on the types of information that may qualify for the specified exemptions and FOUO status can be found in Chapter 3 of DoD 5400.7-R (Reference (p)).

(2) Information that is currently and properly classified shall be withheld from mandatory release in accordance with FOIA Exemption 1. The marking “FOR OFFICIAL USE ONLY” is applied to information that can reasonably be expected to qualify for exemption under one or more of FOIA Exemptions 2 through 9. By definition, information must be unclassified in order to be designated FOUO. This means that:

(a) Information cannot be marked as classified and FOUO at the same time, because no individual element of information can be simultaneously classified and FOUO. Therefore, classified documents containing FOUO information cannot bear an overall document marking of FOUO. However, portions or pages of a classified document that contain only FOUO information will be marked in a manner that identifies the FOUO content.

(b) Information that is declassified may be designated and marked as FOUO only when disclosure to the public of that particular record, or portion thereof, would reasonably be expected to cause a foreseeable harm to an interest protected by one or more of FOIA Exemptions 2 through 9.
(c) FOUO is not authorized as a means of protecting information that otherwise does not merit protection as classified for national security reasons.

**c. Markings**

(1) Information that has been determined to qualify for FOUO status shall be indicated by markings. Markings are to be applied at the time documents are created to properly protect the information. When a classified document or portion thereof is declassified, FOUO markings may be applied, if applicable, to protect the information.

(2) Marking information FOUO does not automatically qualify it for exemption from public release pursuant to the FOIA. If a request for a record is received, the information shall be reviewed in accordance with the procedures of Reference (p) to determine if it truly qualifies for exemption. Similarly, the absence of the FOUO marking does not automatically mean the information shall be released. Some types of records (e.g., personnel records) are not normally marked FOUO, but may still qualify for withholding in accordance with the FOIA. Information marked FOUO shall not specify, or have annotated, a FOIA exemption number.

(3) Unclassified documents and material, including information in electronic form, containing FOUO information shall be marked as follows:

(a) Each document determined to contain FOUO information shall identify the originating agency or office. This information shall be clear and complete enough to allow someone receiving the document to contact the office if questions or problems about the designation or markings arise.

(b) Documents shall be marked “FOR OFFICIAL USE ONLY” at the bottom of the outside of the front cover (if there is one), the title page, the first page, and the outside of the back cover (if there is one). Optionally, for consistency with classified systems, the document may be marked “UNCLASSIFIED//FOR OFFICIAL USE ONLY.”

(c) Internal pages of the document that contain FOUO information shall be marked “FOR OFFICIAL USE ONLY” at the bottom. Optionally, for consistency with classified systems, internal pages may be marked “UNCLASSIFIED//FOR OFFICIAL USE ONLY” or “UNCLASSIFIED//FOUO”; in such case internal pages shall be marked at both the top and bottom.

(d) Subjects, titles, and each section, part, paragraph, or similar portion of an FOUO document shall be marked to show that they contain information requiring protection. Use the parenthetical notation “(FOUO)” (or optionally “(U//FOUO)”) to identify information as FOUO for this purpose. Place this notation immediately before the text.

(e) Each part of electronically transmitted messages, including e-mail, containing FOUO information shall be marked as required by paragraph 2.c of this enclosure. Unclassified messages containing FOUO information shall be marked “FOR OFFICIAL USE ONLY” (optionally “UNCLASSIFIED//FOR OFFICIAL USE ONLY” or “UNCLASSIFIED//FOUO”)
(5) FOUO information disseminated outside the Department of Defense shall also bear a marking on the outside of the front cover, first page, or at the beginning of the text that states that the information may be exempt from mandatory disclosure in accordance with the FOIA. A statement similar to that shown in Figure 1 is sufficient. A FOIA exemption number shall NOT be applied.

Figure 1. Exemption Notice for FOUO Disseminated Outside of the Department of Defense

This document contains information that may be exempt from mandatory disclosure under the Freedom of Information Act.

(6) Technical documents that require a distribution statement restricting disclosure and/or an export control warning notice pursuant to DoDD 5230.24 (Reference (q)) and section 8 of this enclosure should be marked as FOUO when appropriate, in addition to the required distribution statement.

d. Access to FOUO Information

(1) No person may have access to information designated as FOUO unless that person has been determined to have a valid need for such access in connection with the accomplishment of a lawful and authorized Government purpose.

(2) The final responsibility for determining whether an individual has a valid need for access to information designated as FOUO rests with the individual who has authorized possession, knowledge, or control of the information, not with the prospective recipient.

(3) Information designated as FOUO may be disseminated within the DoD Components and between officials of DoD Components and DoD contractors, consultants, and grantees to conduct official business for the Department of Defense, provided that dissemination is consistent with any further controls imposed by a distribution statement. (See section 8 of this enclosure for information on distribution statements.)

(4) Information designated as FOUO may be disseminated to representatives of foreign governments and international organizations to the extent that disclosure would further the execution of a lawful and authorized mission or purpose. Such dissemination shall be in compliance with Reference (l) and other applicable statutes, regulations, and policies. (See paragraphs 1.g and 1.h of this enclosure for general disclosure guidance.)

(5) DoD holders of information designated as FOUO are authorized to disseminate such information to officials in other departments and agencies of the Executive and Judicial Branches to fulfill a Government function provided such dissemination is consistent with any further controls imposed by distribution statements or other regulations. If the information is covered by
the Privacy Act of 1974, as amended, disclosure is authorized only if the requirements of DoD 5400.11-R (Reference (r)) are also satisfied. Records thus transmitted shall be marked as required by paragraph 2.c of this enclosure, and the recipient shall be advised that the information may qualify for exemption from public disclosure, pursuant to the FOIA, and that special handling instructions do or do not apply. Release of official information in litigation and testimony by DoD personnel as witnesses shall be in accordance with DoDD 5405.2 (Reference (s)).

(6) Release of FOUO information to Congress shall be in accordance with DoDI 5400.04 (Reference (t)). If the information is covered by the Privacy Act of 1974, as amended, disclosure is authorized only if the requirements of Reference (r) are also satisfied.

(7) DoDI 7650.01 (Reference (u)) governs release of FOUO information to the Government Accountability Office (GAO). If the information is covered by the Privacy Act of 1974, as amended, disclosure is authorized only if the requirements of Reference (r) are also satisfied.

(8) Records released outside of the Department of Defense, including to the Congress or GAO, should be reviewed to determine whether the information warrants FOUO status. If it does not, any prior FOUO markings shall be removed by lining-through or other appropriate means. If withholding criteria are met, the records shall be marked FOUO and the recipient provided an explanation for the marking.

(9) FOUO information may be shared with State, local, or tribal government officials, provided a specific need to know has been established and the information is shared in furtherance of an official governmental purpose. In all cases, the recipient must agree to the stipulation that the information shall be withheld by the recipient from public release. Records thus shared shall be marked in accordance with paragraph 2.c of this enclosure, and the recipient shall be advised whether special handling instructions do or do not apply.

e. Protection of FOUO Information

(1) During working hours, reasonable steps shall be taken to minimize the risk of access by unauthorized personnel (e.g., not reading, discussing, or leaving FOUO information unattended where unauthorized personnel are present). After working hours, FOUO information may be stored in unlocked containers, desks, or cabinets if Government or Government-contract building security is provided. If such building security is not provided or is deemed inadequate, the information shall be stored in locked desks, file cabinets, bookcases, locked rooms, etc.

(2) FOUO information and material may be transmitted via first class mail, parcel post, or, for bulk shipments, via fourth class mail. Whenever practical, electronic transmission of FOUO information (e.g., data, website, or e-mail) shall be by approved secure communications systems or systems utilizing other protective measures such as Public Key Infrastructure (PKI) or transport layer security (e.g., https). Use of wireless telephones should be avoided when other options are available. Transmission of FOUO by facsimile machine (fax) is permitted; the sender is responsible for determining that appropriate protection will be available at the receiving
location prior to transmission (e.g., machine attended by a person authorized to receive FOUO; fax located in a controlled government environment).

(3) FOUO information may only be posted to DoD websites consistent with security and access requirements specified in Reference (k).

(4) Additional guidance regarding FOUO information that may also require protection pursuant to the Privacy Act of 1974, as amended, may be found in Reference (r).

(5) Record copies of FOUO documents shall be disposed of according to provisions of chapter 33 of title 44, U.S.C. (Reference (v)) and the DoD Component records management directives. Non-record FOUO documents may be destroyed by any of the means approved for the destruction of classified information or by any other means that would make it difficult to recognize or reconstruct the information.

(6) The originator or other competent authority (e.g., initial FOIA denial and appellate authorities) shall terminate the FOUO status of specific information when circumstances indicate that the information no longer requires protection from public disclosure. When the FOUO status of information is terminated in this manner, all known holders shall be notified, to the extent practical. Upon notification, holders shall efface or remove the FOUO markings, but records in file or storage need not be retrieved solely for that purpose. Information whose FOUO status has been terminated shall not be released to the public without the review and approval required by paragraph 1.f of this enclosure.