



Department of Energy Office of Classification

Classification Training Institute

THE DEPARTMENT OF ENERGY'S OFFICIAL USE ONLY PROGRAM

January 2018



Official Use Only Information

- Even if information is not classified, it may be sensitive and, therefore, be controlled within DOE
- Such information is identified and protected according to DOE directives
- Control ensures
 - The information is not shared with persons who do not have a need to know and
 - An appropriate review is conducted prior to public release



What is OOU?

- Certain unclassified information that has the potential to damage governmental, commercial, or private interests if released to persons who don't need it to do their jobs or other DOE-authorized activity and potentially falls under a FOIA Exemption



Why do we use Official Use Only?

- OOU identifies information whose handling and protection requirements are not covered by other DOE directives (e.g., Export Controlled Information, Protected Cooperative Research and Development Information, Applied Technology, drafts, predecisional documents, proprietary information)
- Provides consistent handling and protection throughout the complex
- Alerts employees that information must not be released through informal methods (posted on a website or sent to a person without a need to know the information)



What information is OUO?

- Export Controlled Information
- Proprietary information
- Privacy Act Information
- Personally Identifiable Information
- Sensitive Nuclear Technology
- Source selection information
- Patent information
- Some draft documents

And many other types of sensitive information...



Who has responsibility for OOU?

- The Office of Classification (AU-60) develops DOE's overall policy and guidelines for identifying and protecting OOU
- The Chief Information Officer (CIO) issues guidance regarding the protection of OOU on DOE information systems
- The Chief Privacy Officer manages the DOE Privacy Program
- The Office of Classification, in coordination with Program Offices, determines information in classified subject areas that is OOU
- Program Offices determine the information within their purview that is OOU (that is not in a in classified subject areas/covered by guidance)
- Individuals may use certain criteria to determine if information is OOU if it is not covered by the above.



When must a document be reviewed for OUO?

- “An unclassified document originated within a program element must be evaluated to determine whether it contains OUO information.”
 - If the originator believes the document contains sensitive information, it should be reviewed prior to being finalized, released by the originator outside of the activity or office, or filed
 - Documents originated prior to April 9, 2003 (when the OUO program was established) must be reviewed if they are going to be publicly released if the possessor believes there is a potential for the document to contain sensitive information



Who has authority to identify OOU?

- Any employee, Federal or contractor, from an office with cognizance over the information may make OOU determinations for unclassified documents
 - originated within his/her office,
 - produced for his/her office, or
 - under the control of his/her office
- No special authority or designation is required
- Training is not required, but is highly recommended (e.g., this PowerPoint briefing)



What is the criteria for information to be designated OOU?

Certain unclassified information that meets the following two criteria

- Damage: In the opinion of the person making the determination, the information has the potential to damage governmental, commercial, or private interests if released to persons who don't need it to do their jobs or other DOE-authorized activity

AND

- Potentially falls under a FOIA Exemption: In the opinion of the person making the determination, the information may fall under at least one of the FOIA exemptions (3-9)



What is the basis for determining if a document contains OOU information?

1. Guidance

- Approved by AU-60
- Issued by AU-60, a program office, or a DOE/NNSA contractor

2. Not based on guidance, an individual determines if

- Release could cause damage
- May fall under a FOIA exemption



How do you make an OOU determination?

1. Determine if the information is covered in a classification guide (you may need to talk to a Derivative Classifier)
2. If a classification guide topic states the information is OOU...
3. The document containing the information **MUST** be marked and protected as OOU

If the information is not in a classification guide –



How do you make an OOU determination if the information is not in a classification guide?

- Decide if you think release could cause harm to governmental, commercial, or private interests if given to someone who doesn't need it to perform his or her job or other DOE-authorized activity?
 - If not, the information is NOT OOU
 - If yes, then –
- Decide if you think the information potentially falls under a FOIA exemption?
 - If not, then the information is NOT OOU
 - If yes, then
- Mark and protect the information as OOU



What are inappropriate uses of OOU?

- OOU must not be used to
 - Conceal violations of law, inefficiency, or administrative error
 - Prevent embarrassment to an organization or agency
 - Prevent or delay the release of information that does not meet the criteria to be designated as OOU



OUO and the FOIA exemptions

The basis for OUO determinations



Does OOU mean the information is exempt from release under the FOIA?

- OOU is not a determination that information is FOIA exempt
- OOU is a determination that the information may be FOIA exempt
 - OOU markings ensure a document is not publicly released without an appropriate review
 - If an OOU document is requested under the FOIA, a FOIA Authorizing Official must determine whether the information must be released
 - Only a FOIA Authorizing Official may determine that information is FOIA exempt
- The threshold for withholding information under the FOIA is higher and requires in-depth knowledge of the FOIA

OOU does not mean the information is FOIA Exempt



OUO and FOIA Exemption 1

Exemption 1 – National Security Information

- Information classified by Executive order
- Identification and protection is governed by Executive order, regulation, and directives, so it is

NOT OUO



OUO and FOIA Exemption 2

~~Exemption 2 – Circumvention of Statute~~

In March 2011, the Supreme Court changed the scope of Exemption 2 so that it no longer applies to information that could assist in the circumvention of a statute. Therefore,

Exemption 2 no longer applies to OUO

Under DOE Order 471.3, the only use of Exemption 2 as the basis for an OUO determination was “Circumvention of Statute.” Since that is no longer valid, Exemption 2 cannot be used as the basis for OUO determinations.

For information that was previously OUO based on Exemption 2, Circumvention of Statute, another appropriate exemption must be determined.



Policy Bulletin 4 (POL-4), Exemption 2 Guidance

- For OOU determinations based on classification guidance, if the guide topic cites Exemption 2, use Exemption 7, Law Enforcement instead
- Does not apply to decisions that are not based on classification guidance
- Do not need to re-mark legacy documents



U. S. Department of Energy
Office of Classification
Washington, DC 20585

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POLICY BULLETIN

POL-4

SUBJECT: Exemption 2 Guidance

- I. Purpose. The purpose of this bulletin is to provide guidance on which Freedom of Information Act (FOIA) exemption should be used as the basis for security-related information currently protected as Official Use Only (OOU) under "Exemption 2, Circumvention of Statute," in DOE Classification Guides.
- II. Discussion. As a result of a recent Supreme Court ruling (*Milner v. Department of the Navy*), the scope of Exemption 2 has been significantly narrowed to apply only to that information that meets the plain meaning of "personnel rules and practices." The concept of "High-2" information, which concerned internal matters of a more substantial nature whose disclosure would significantly risk the circumvention of a legal requirement, is no longer valid. Consequently, "Exemption 2, Circumvention of Statute," may no longer be used in our classification guides as a basis for OOU determinations.

Based on guidelines recently issued by the Department of Justice, Exemption 7 appears to be the appropriate exemption to use for Department of Energy security-related information formerly protected under Exemption 2 in our classification guides. As guides are updated, the originating Classification Office will review all OOU guide topics to ensure that the information requiring protection falls under an appropriate Exemption and revise guide topics as appropriate. Until these reviews are completed, "Exemption 7, Law Enforcement," shall be the basis for any guidance-related OOU determination that would have been based on Exemption 2.

- III. Guidance. Effective immediately, "Exemption 7, Law Enforcement," will be used as a basis for OOU determinations in lieu of "Exemption 2, Circumvention of Statute," for all topics in DOE classification guides that currently cite Exemption 2. It is not necessary to make pen and ink changes to every topic in guides so long as the users are aware of this policy change.
- IV. Legacy Documents. Existing OOU documents that cite a classification guide and use "Exemption 2, Circumventions of Statute," as the basis for the OOU determination do not have to be re-marked. If information is extracted from such



OUO and FOIA Exemption 3

Exemption 3 – Statutory Exemption

- Disclosure of information is prohibited by statute
- Not OUO if information is otherwise classified or controlled (e.g., RD, FRD, TFNI, UCNI)

NOTE: The determination must be based on statute, but the statute does not have to be identified on the front marking.



OOU and FOIA Exemption 3 Examples

- Federal Technology Transfer Act – Protected CRADA information
- Procurement Integrity Act – Source selection information
- Internal Revenue Code – Taxpayer identification numbers
- Patent Act – Applications for patents
- Arms Export Control Act – Certain information concerning export license applications
- Export Administration Act – information pertaining to license applications under the Act
- National Security Act of 1947 – Intelligence sources and methods
- Espionage Act – Information pertaining to communication intelligence and cryptographic devices



OOU and FOIA Exemption 4

Exemption 4 – Commercial/Proprietary

- Trade secrets
- Commercial or financial information whose release would
 - Impair the Government's ability to obtain information in the future or
 - Cause competitive harm to submitter



OUO Based on Exemption 4 Examples

- Trade secret information (e.g., Coca Cola formula)
- Financial information, such as income, profits, losses, costs
- Contract proposal, solicited or unsolicited
- Customer/supplier lists
- Government credit card numbers
- Security measures for commercial entities performing work for the Government



OUO and FOIA Exemption 5

Exemption 5 – Privileged Information

- Three primary privileges
 - Deliberative process (a.k.a. “predecisional”)
 - Attorney-Work Product
 - Attorney-Client



OUO Based on Exemption 5

Exemption 5 – Privileged Information

- Why deliberative process information is not released
 - To encourage open, frank discussions on matters of policy between subordinates and superiors
 - To protect against premature disclosure of proposed policies before they are adopted
 - To protect against public confusion that might result from disclosure of reasons and rationales that were not the grounds for an agency's action
- Not just any deliberative process document; must have the potential for damage based on one of the above reasons



OOU Based on Exemption 5 Examples

- Documents concerning budget cuts
- Documents concerning cancellation of a program
- Documents concerning DOE property purchases



OUO and FOIA Exemption 6

Exemption 6 – Personal Privacy

- Constitutes a “clearly unwarranted invasion of personal privacy”

(Includes personal information that might cause distress or embarrassment or risk identity theft)



OUO Based on Exemption 6

Personally Identifiable Information (PII)
is OUO

- Examples (when associated with an individual)
 - Social Security Number (even when not associated with an individual)
 - Place of birth, date of birth
 - Mother's maiden name
 - Medical history
 - Financial data



Not OUO Based on Exemption 6

Information usually not OUO under Exemption 6

- Federal employee's name, title, grade, position description, and duty station

Note: May be OUO if release of information would pose a risk to person's safety or interfere with intelligence or law enforcement programs



OOU and FOIA Exemption 7

Exemption 7 – Law Enforcement

- Includes (but is not limited to)
 - Information whose release could reasonably be expected to endanger the life or physical safety of any individual or
 - Information would disclose techniques and procedures for law enforcement investigations or prosecutions



OUO Based on Exemption 7 Examples

- Investigative information
 - Civil, criminal investigations
 - Personnel investigations
 - National security/terrorism investigations
- Security measures to protect Federal officials
- Security measures for Federal buildings
- Security manuals
- Classification guides

Covers much information previously determined to be OUO under Exemption 2



OUO and FOIA Exemption 8

Exemption 8 – Financial Institutions

- Evaluations of a financial institution's stability prepared by, on behalf of, or for use of an agency responsible for regulation of financial institutions (FDIC, etc.)

NOT DOE Information



OUO and FOIA Exemption 9

Exemption 9 – Wells

- Technical and scientific information about any type of well

Exemption 9 Examples

- Geothermal well BTU production
- Ground water inventories and well yields in gallons per minute
- Natural gas reserves



OUO Determinations - Summary

- If guidance states information is OUO, it must be identified as OUO
- If there is no guidance, a person may make an OUO determination, if, in the opinion of the person
 - Release of the information could cause damage and
 - The information may fall under FOIA exemptions 3-9
- Many determinations are discretionary
 - Assessment may vary among program offices/employees
 - What is sensitive for one program office/employee may not be for another
- YOU decide when to use the tool



How is OUO marked?



Markings are Important!

- Various markings (other than OUO) used to indicate sensitive information cause confusion
 - Not certain if document needs protection
 - Not certain how to protect document
 - No mandated protection
 - May have to call to determine intent
- When identified as OUO ensures proper handling
- Examples of markings with no standard protection requirements
 - Draft
 - Business Confidential
 - Proprietary
 - Pre-Decisional



How are OOU Documents Marked? Front Marking

<p align="center">OFFICIAL USE ONLY</p> <p><u>May</u> be exempt from public release under the Freedom of Information Act (5 U.S.C. 552), exemption number and category: <u>5, Privileged Information</u></p> <p align="center">Department of Energy review required before public release</p> <p>Name/Org: <u>John Smithson, NA-121</u> Date: <u>4/11/14</u></p> <p>Guidance (if applicable): <u>N/A</u></p>
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- Include exemption number and description
- Name and organization
- Date
- List short title of classification/UCNI guide used (e.g., CG-SS-5)
- If guide not used, recommend N/A

Markings are for example purposes only



Exemption Numbers and Names

<u>Exemption</u>	<u>Category Name</u>
3	Statutory Exemption
4	Commercial/Proprietary
5	Privileged Information
6	Personal Privacy
7	Law Enforcement
9	Wells



How are OUO Documents Marked? – Page Marking

OFFICIAL USE ONLY

- On bottom of all pages

OR

- On bottom of only those pages containing OUO information

XXXXX XX X XXXXXX XXX
XX XXXXXXXXXXX XXXXXXXX
XXXXXXXXX.

XX XXXXXXX XXXXX XXXX
XXXXXXXXXX XX XXXXXX. XX
XXXX XXXXXXX X XXXXX
XXXXXX XXXX XXXX.

OFFICIAL USE ONLY

Markings are for example purposes only



How are OUO Documents Marked?

Mandatory Supplemental Markings

- Markings required by law, regulation, or other DOE directives that convey additional advice on handling or access restrictions
- Used in addition to, not in place of, OUO markings (both types of markings must appear on the document)
- OUO markings ensure consistent protection and handling throughout DOE
- Examples of information with supplemental markings
 - Protected Cooperative Research and Development Agreement (CRADA) Information
 - Export Controlled Information (ECI)
 - Applied Technology information (AT)
 - Source Selection Information



- XXXX XXXXXX XX XXXXXXXX
XXXXX XXXXXXXXXXXXXXX XXXXXXX
- XXXXXXXX. Xxxx xxxxxx xxxxxxxxxxx xxx xxxxxxxxxx xxx xxxxxxxxxx xxxxxxxxxxxxxx xxx xxxxxxxxxxxxxx, xxxxxxx, xxx xxxxxxxxxxx XXXxxxxx Xxxx XXXX (XXX) xxxxxxxxxxxxxx. Xxxxx xxxxxxxxxxx xxxxxxx xxxxxxxxxxxxxx xxxxxxxxxxxxxx xxx xxxxxxxxxxxxxx xxxxxxxxxxx. Xxxxxxxx X xxxxxxxxxxxxxx xxx xxxxxxxxxxxxxx xxx xxxxxxxxxxxxxx xxx xxxxxxx XXX xxxxxxxxxxxxxx; Xxxxxxxx XX xxxxxxxxxxx xxxxxxxxxxxxxx XXX xxxxxxxxxxxxxx. Xxx Xxxxxxxxx XXXxxxxxxxx XXXxxxxx (XXX), Xxxxxxxxx x, xxx xxxxx xxxxxxxxxxxxxx xx xxx Xxxxx xxx xxxxx xx xxx/xxxxxxxx xxxxxxxxxxx xxxxxxxxxxxxxx.
- XXXXXXXX. Xxxxxxxxx xxxxxxxxxxx xxx Xxxxx xxxxxx xx xxxxxxxxxx xx Xxxxxxxxxxxx XXXxxxxxxxxxxx xxx Xxxxxx Xxxxx xx xxx-xxx-xxxx.
- Protected CRADA Information**
- This product contains Protected CRADA Information which was produced on 11/6/06 under CRADA No. 12345 and is not to be further disclosed for a period of five years from the date it was produced except as expressly provided for in the CRADA.
- OFFICIAL USE ONLY**
- May be exempt from public release under the Freedom of Information Act (5 U.S.C. 552), exemption number and category: ... 3, Statutory
- Exemption**
- Department of Energy review required before public release
- Name/Org Curtis Gonzales, BWXT-Pantex Date 4/15/03
- Guidance (if applicable): Pantex Plant OJOU Topical Guide
- OFFICIAL USE ONLY**



Who has authority to remove OOU markings?

Decisions based on guidance

- If markings applied based on guidance
 - Any person authorized to use guidance when guidance specifies information is no longer OOU
 - FOIA Authorizing Official who approves release of document requested under the FOIA



Who has authority to remove OOU markings?

Decisions not based on guidance

- If markings applied based on an individual's evaluation
 - Employee who initially applied markings
 - That employee's supervisor
 - FOIA Authorizing Official who approves release of document requested under FOIA



How are OUO markings removed?

- Person making the determination
 - Crosses out OUO front, page, and any supplemental markings
 - Places following marking on front of document:

DOES NOT CONTAIN	
OFFICIAL USE ONLY INFORMATION	
Name/Org: <u>Michael Sampson, IM-40</u>	Date: <u>4/30/14</u>



How is a document transmitting OUO marked?

- Required if transmittal document itself does not contain classified or controlled information
- Calls attention to presence of OUO information in attachment

Document transmitted
contains OUO information



Sample Marking of Document Transmitting OUO

- Attachment contains OUO; transmitting document does not contain classified or controlled information
- Front page of document states: Document transmitted contains OUO

XXX XXXXXX XX XXXXXXXX
XXXXX XXXXXXXXXXXXXXX XXXXXX

XXXXXXXX. XXXX XXXXXX XXXXXXXXXXX XXX XXXXXXXX XXXX XXXXXXXX XXXXXXXXXXX XXX
XXXXXXXXXXXX, XXXXXXX, XXX XXXXXXXXXXX XXXXXXXX XXX XXX (XXX)
XXXXXXXXXXXX. XXXXX XXXXXXXX XXXXXXX XXXXXXXXXXX XXXXXXXXXXX XXX XXXXXXXXXXX
XXXXXXXX. XXXXXXX X XXXXXXXX XXX XXXXXXXXXXX XXX XXXXXXXXXXX XXX
XXXXXXXX XXX XXXXXXXXXXX; XXXXXXX XX XXXXXXXXXXX XXXXXXXXXXX XXX
XXXXXXXXXXXX. XXX XXXXXXXX XXXXXXXXXXX XXXXXXXX (XXX), XXXXXXXXXXX X,
XXXX XXXXX XXXXXXXXXXX XXX XXX XXXXX XXX XXXX XX XXX/XXXXXXXX
XXXXXXXXXXXX XXXXXXXXXXX.

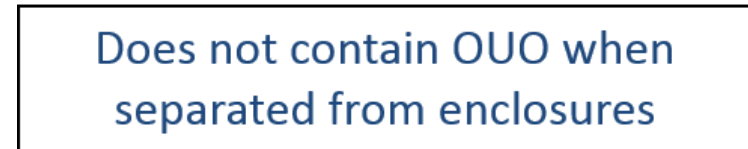
XXXXXXXX. XXXXXXX XXXXXXXXXXX XXXX XXXXXXX XXXXXXX XX XXXXXXXXXXX XX
XXXXXXXXXXXX XXXXXXXXXXXXXXX XXX XXXXXXX XXXXXXX XX XXX-XXX-XXXX.

Document transmitted contains
OUO Information



Note about language...

- To indicate a document does not contain OUO information when separated from enclosures
 - All OUO is unclassified, so the statement “UNCLASSIFIED when separated from enclosures” does not indicate transmittal does not contain OUO.
 - Instead use “Does not contain OUO when separated from enclosures”



Markings are for example purposes only



How is an Email containing OUO marked?

- First line of message
 - Insert “OUO” before text
- If attachment to message is OUO
 - Message must so indicate
 - Attachment must be marked correctly



Are there marking exceptions?

Restricted Access Files

Centralized records storage locations or systems where access is limited to only those specific individuals with a need to know the information in the records, such as central personnel files

- Do not need to be reviewed and marked while in these files or when retrieved from these files if
 - they will be returned to the files and
 - they are not accessible by unauthorized personnel
- If the document is not to be returned to files, it must be reviewed for OUO and, if appropriate, marked



Are there marking exceptions?

Documents generated before DOE M 471.3-1

- No requirement to review documents generated before DOE M 471.3 was issued (April 9, 2003) unless document is to be publicly released
 - Prior to public release, a document must be reviewed to ensure any information exempt from release under the FOIA is removed



How is OUO protected?



Who may have access to OUO?

- Anyone needing the information to perform his/her job or other DOE-authorized activity
 - No security clearance required
 - Not limited to DOE employees
 - No requirement for U.S. citizenship
- Some OUO may have additional access restrictions (Export Controlled Information, Source Selection Information, etc.)
- Determination made by person possessing document – not person wanting the document



How is OOU protected in use?

- Take reasonable precautions to prevent access by persons who don't need the information to do their jobs
- For example, don't read an OOU document in a public place (in the cafeteria, on public transportation)



How is OOU protected in storage?

- With internal building security during non-duty hours - Unlocked file cabinet, desk, briefcase, etc.
- No internal building security during non-duty hours - Locked room or locked file cabinet, desk, briefcase, etc.



How is OOU protected in copying?

- Permission from originator is not required
- Make minimum number of copies
- Make sure copies are marked and protected



How is OOU protected in destruction?

- Strip-cut shredder with strips no more than ¼" wide and 2" long
- May also use any method approved for classified (not required)
- Any other method approved by local security office



How is OOU transmitted?

- Transmitting by mail – inside facility
 - Place in sealed, opaque envelope or wrapping with recipient's address and
 - "TO BE OPENED BY ADDRESSEE ONLY" on outside



How is OOU transmitted by mail?

- Transmitting by mail – outside facility
 - Place in sealed, opaque envelope or wrapping with recipient's address, return address, and "TO BE OPENED BY ADDRESSEE ONLY" on outside (same requirements as inside facility, but must include return address)
 - U.S. mail – First Class, Express, Certified, Registered
 - Any commercial carrier



How is OUC transmitted within or between facilities?

- Transmitting by hand between facilities or within a facility
 - May be hand-carried
 - Must control access to document



What are the cyber security requirements for OUO?

- Cyber Security includes (but is not limited to)
 - Encryption
 - Storage on network
 - OUO on DOE intranet sites
- Requirements may be unique to site depending on network architecture
- Determined by
 - Program Office or
 - Local Designated Accrediting Authority (DAA) –Requirements usually found in Program Cyber Security Plan, User Agreements



How should OOU be protected?

- DOECAST dated 2/11/2013
 - Do not store personal files on Government networks, especially files with your or your family's sensitive personal information.
 - Do not retain sensitive Government information for longer than necessary.
 - Encrypt emails or files saved on your hard drive or network drive containing controlled unclassified information.
- Point of Contact
 - CyberInfo@hq.doe.gov or 1-855-719-4496.



How is OOU transmitted by phone?

- Transmitting over voice circuits
 - Use encryption whenever possible
 - If unavailable and other encrypted means not a feasible alternative, regular voice circuits allowed



How is another Agency document marked as containing sensitive information handled?

- Usually handle as OUO
- Several exceptions – governed by regulations with special marking and handling requirements
 - Examples:
 - Safeguards Information (SGI) - Nuclear Regulatory Commission
 - Sensitive Security Information (SSI) – DHS
- If not certain, contact originating agency



How do you mark documents that contain other-Agency sensitive information?

- **If you use this information in DOE documents**
 - Apply OUO markings to documents that incorporate other-Agency CUI information
 - Portion mark as OUO in classified documents



Are there penalties for the misuse of OOU?

- May be imposed if person
 - Intentionally releases OOU information from document marked "OOU"
 - Intentionally or negligently releases an OOU document
 - Intentionally does not mark a document known to contain OOU information
 - Intentionally marks a document "OOU" known not to contain OOU information



What penalties are possible?

- Examples of penalties (DOE Order 333.1)
 - Verbal admonishment
 - Written reprimand
 - Suspension
 - Termination



Where can I find more information about OUO?

DOE Directives - <https://www.directives.doe.gov/>

- DOE Order 471.3, Administrative Change 1
- DOE Manual 471.3-1, Administrative Change 1

Office of Classification OUO webpage - <http://energy.gov/ehss/services/classification/official-use-only-information>



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