

24. (DoD) The JSC’s review, analysis, and recommendation to the DoD Acting General Counsel for any amendments to Article 32, UCMJ, were due on October 4, 2013. Please provide a copy of the JSC’s review, analysis and recommendations to the Response Systems Panel. If the General Counsel or Secretary of Defense has issued a position regarding possible amendments to Article 32, please provide that information as well.

DOD	<p>DOD OGC: The Joint Service Committee document to which Question 24 refers is not publicly releasable. The document falls within the FOIA exemption for “intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency.” 5 U.S.C. § 552(b)(5). Under that exemption, pre-decisional or deliberative documents are exempt from disclosure. That exemption promotes an important public interest. As the Supreme Court has observed, “‘frank discussion of legal or policy matters’ in writing might be inhibited if the discussion were made public” and “the ‘decisions’ and ‘policies formulated’ would be the poorer as a result.” <i>N.L.R.B. v. Sears, Roebuck & Co.</i>, 421 U.S. 132, 150 (1975) (quoting S. Rep. No. 813, 89th Cong., 1st Sess., 9 (1965)). The Court added, “human experience teaches that those who expect public dissemination of their remarks may well temper candor with a concern for appearances . . . to the detriment of the decisionmaking process.” <i>Id.</i> at 150-51 (ellipsis in original) (quoting <i>United States v. Nixon</i>, 418 U.S. 683, 705 (1974)).</p> <p>The Department will make the document available to the Response System Panel subject to the same guidelines that apply to the Defense Legal Policy Board’s receipt of FOIA-exempt documents to ensure that such documents are not released to the public:</p> <ul style="list-style-type: none"> a. Agencies providing documents to the DLPB will identify and properly mark those believed to be protected from release to the public under a FOIA exemption as “PROTECTED DOCUMENT – FOIA EXEMPT.” b. DLPB will not e-mail to Board or Subcommittee members any documents marked as protected and will to the extent possible not leave such documents with members after sessions have concluded. All Board and Subcommittee members will receive instructions on the handling of marked documents. d. The DLPB will assume that all documents received have been properly screened and marked. <p>Please coordinate with the Office of General Counsel concerning appropriate methods to provide access to the document while preserving its protected status.</p>
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Narrative responses have been consolidated by the Response Systems Panel (RSP). Please forgive formatting errors in text and data. Source documents for narrative responses can be obtained by contacting the RSP.