



CHAIRMAN OF THE JOINT CHIEFS OF STAFF NOTICE

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CJCS Notice 5779
5 September 2013

PRESERVATION OF RECORDS OR INFORMATION RELATED TO HEBSHI V.
UNITED STATES, ET AL., NO. 13-CV-10253 (E.D. MICH.)

Reference:

Department of Defense Office of General Counsel Memo, 28 August 2013

1. Purpose. To preserve and maintain records relating to allegations that military aircraft may have been “scrambled” to escort or shadow civilian airliner Frontier Airlines Flight 623 on 11 September 2011.
2. Cancellation. None.
3. Applicability. This notice is applicable to the Joint Staff and U.S. Northern Command (USNORTHCOM).
4. Background. The Department of Defense (DoD) is not a named defendant in the above-referenced case, but documentation received by the Department of Justice (DoJ) suggests that the Department may have materials pertinent to the subject litigation.
 - a. Ms. Shoshana Hebshi filed a civil lawsuit in federal district court stemming from an incident that occurred on 11 September 2011. Ms. Hebshi was a passenger on Frontier Airlines Flight 623 from Denver, Colorado, to Detroit, Michigan. Based on reports of suspicious passenger activity on Flight 623, Ms. Hebshi and two other passengers were escorted off the aircraft upon landing and investigated.
 - b. The documentation suggests that DoD assets (possibly F-16 fighter jets) were deployed from Toledo, Ohio, to shadow Frontier Airlines Flight 623 on 11 September 2011, and that the North American Aerospace Defense Command scrambled F-16 fighter jets to shadow the aircraft.

c. These assets may have been deployed sometime between 1 and 4 p.m. Eastern Time that day. The aircraft was scheduled to land at 3:34 p.m. at Detroit Metropolitan Wayne County Airport in Michigan and did in fact arrive at approximately 3:45 p.m.

5. Statutory Requirement

a. Upon receipt of this Preservation Notice, applicable entities are advised of their legal obligation to preserve and retain any below referenced material in their possession, custody, or control.

b. Destruction of documents, information, records, and other material described, including destruction that would otherwise take place in the normal course of the disposition of official information or records, is prohibited and may result in disciplinary action.

c. The Federal Rules of Civil Procedure requires DoD to preserve or produce the material in whatever form it is generated and maintained.

d. This preservation requirement applies to documents responsive to the stated requests, regardless of any applicable privileges.

e. Additional instructions will be provided if requested to produce any records.


5. Action or Procedure. To ensure that the United States can defend itself and its employees from this suit as effectively as possible, the Department should search for and preserve *all* information, including electronically stored information, hard copy materials, and tangible evidence pertaining to this incident.

a. Your search should be calculated to locate all records, documents, and material in your organization's possession, custody, or control, including any files, holdings, documents, reports, recordings, databases, audio recordings, radio dispatches, cell phone logs, pages, text messages, e-mails, transcripts, or other communications or documents related to the deployment of assets mentioned above.

b. Document any search terms/procedures used in electronic and hard copy searches and steps taken within your organization to preserve relevant material in the event of future inquiry by the court and/or plaintiffs. Coordinate with your IT personnel to ensure relevant material is not destroyed during the pendency of this litigation, to include overriding normal document destruction policies.

6. Releasability. This notice is approved for public release; distribution is unlimited. DoD components (to include the Combatant Commands), other Federal Agencies, and the public may obtain copies of this notice through the Internet from the CJCS Directives Home Page--www.dtic.mil/cjcs_directives.

7. Effective Date. Further guidance on the specific processes for the preservation and maintenance of this information is to follow. The Joint Staff point of contact is Ms. Teresa Black, Information Management Division, Joint Secretariat, 703-697-8862, teresa.l.black6.civ@mail.smil.mil. Please disseminate immediately throughout your organization.


FREDERICK S. RUDESHEIM
Major General, USA
Vice Director, Joint Staff

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DISTRIBUTION

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