

pursuant to an ex parte showing under this section.

(Added Pub. L. 111-84, div. A, title XVIII, §1802, Oct. 28, 2009, 123 Stat. 2592.)

REFERENCES IN TEXT

The Classified Information Procedures Act, referred to in subsec. (b)(2), is Pub. L. 96-456, Oct. 15, 1980, 94 Stat. 2025, which is set out in the Appendix to Title 18, Crimes and Criminal Procedure.

§ 949p-5. Notice by accused of intention to disclose classified information

(a) NOTICE BY ACCUSED.—

(1) NOTIFICATION OF TRIAL COUNSEL AND MILITARY JUDGE.—If an accused reasonably expects to disclose, or to cause the disclosure of, classified information in any manner in connection with any trial or pretrial proceeding involving the prosecution of such accused, the accused shall, within the time specified by the military judge or, where no time is specified, within 30 days before trial, notify the trial counsel and the military judge in writing. Such notice shall include a brief description of the classified information. Whenever the accused learns of additional classified information the accused reasonably expects to disclose, or to cause the disclosure of, at any such proceeding, the accused shall notify trial counsel and the military judge in writing as soon as possible thereafter and shall include a brief description of the classified information.

(2) LIMITATION ON DISCLOSURE BY ACCUSED.—No accused shall disclose, or cause the disclosure of, any information known or believed to be classified in connection with a trial or pretrial proceeding until—

(A) notice has been given under paragraph (1); and

(B) the United States has been afforded a reasonable opportunity to seek a determination pursuant to the procedure set forth in section 949p-6 of this title and the time for the United States to appeal such determination under section 950d of this title has expired or any appeal under that section by the United States is decided.

(b) FAILURE TO COMPLY.—If the accused fails to comply with the requirements of subsection (a), the military judge—

(1) may preclude disclosure of any classified information not made the subject of notification; and

(2) may prohibit the examination by the accused of any witness with respect to any such information.

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§ 949p-6. Procedure for cases involving classified information

(a) MOTION FOR HEARING.—

(1) REQUEST FOR HEARING.—Within the time specified by the military judge for the filing of a motion under this section, either party may request the military judge to conduct a hearing to make all determinations concerning the use, relevance, or admissibility of classified

information that would otherwise be made during the trial or pretrial proceeding.

(2) CONDUCT OF HEARING.—Upon a request by either party under paragraph (1), the military judge shall conduct such a hearing and shall rule prior to conducting any further proceedings.

(3) IN CAMERA HEARING UPON DECLARATION TO COURT BY APPROPRIATE OFFICIAL OF RISK OF DISCLOSURE OF CLASSIFIED INFORMATION.—Any hearing held pursuant to this subsection (or any portion of such hearing specified in the request of a knowledgeable United States official) shall be held in camera if a knowledgeable United States official possessing authority to classify information submits to the military judge a declaration that a public proceeding may result in the disclosure of classified information. Classified information is not subject to disclosure under this section unless the information is relevant and necessary to an element of the offense or a legally cognizable defense and is otherwise admissible in evidence.

(4) MILITARY JUDGE TO MAKE DETERMINATIONS IN WRITING.—As to each item of classified information, the military judge shall set forth in writing the basis for the determination.

(b) NOTICE AND USE OF CLASSIFIED INFORMATION BY THE GOVERNMENT.—

(1) NOTICE TO ACCUSED.—Before any hearing is conducted pursuant to a request by the trial counsel under subsection (a), trial counsel shall provide the accused with notice of the classified information that is at issue. Such notice shall identify the specific classified information at issue whenever that information previously has been made available to the accused by the United States. When the United States has not previously made the information available to the accused in connection with the case the information may be described by generic category, in such forms as the military judge may approve, rather than by identification of the specific information of concern to the United States.

(2) ORDER BY MILITARY JUDGE UPON REQUEST OF ACCUSED.—Whenever the trial counsel requests a hearing under subsection (a), the military judge, upon request of the accused, may order the trial counsel to provide the accused, prior to trial, such details as to the portion of the charge or specification at issue in the hearing as are needed to give the accused fair notice to prepare for the hearing.

(c) SUBSTITUTIONS.—

(1) IN CAMERA PRETRIAL HEARING.—Upon request of the trial counsel pursuant to the Military Commission Rules of Evidence, and in accordance with the security procedures established by the military judge, the military judge shall conduct a classified in camera pretrial hearing concerning the admissibility of classified information.

(2) PROTECTION OF SOURCES, METHODS, AND ACTIVITIES BY WHICH EVIDENCE ACQUIRED.—When trial counsel seeks to introduce evidence before a military commission under this chapter and the Executive branch has classified the sources, methods, or activities by which the