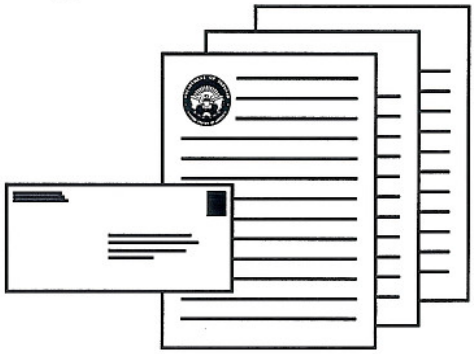
Department of Defense

DOD Freedom of Information Act Handbook



Directorate for
Freedom of Information
and Security Review

"A popular Government without popular information or the means of acquiring it, is but a Prologue to a Farce or a Tragedy or perhaps both. Knowledge will forever govern ignorance, and a people who mean to be their own Governors, must arm themselves with the power knowledge gives."

James Madison

Introduction

This handbook is intended to assist you in making Freedom of Information Act (FOIA) requests for Department of Defense (DoD) records. It will get you started and provide you with a brief description of your rights and the manner in which DoD will respond to your requests. The information contained herein is not intended to be definitive or exhaustive.

The FOIA, which is known by its legal cite as 5 U.S.C. § 552, along with the DoD Regulation, governs how requests will be processed within the DoD. DoD Regulation 5400.7-R, "Department of Defense Freedom of Information Act Program," can be found at Part 286 of Chapter 32 of the Code of Federal Regulations, which is available in most libraries. It can also be purchased from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, for $12.50, and may be found on the World Wide Web by entering:

http://www.defenselink.mil/

click on "Publications"

click on Freedom of Information Act (FOIA)

click Department of Defense (DoD) Freedom of Information Act Program Regulation

Due to its size and complexity, the Department of Defense's FOIA program is decentralized among the several "DoD Components," which operate their own FOIA offices and respond directly to the public for their own records. If you desire records from these Components, please write to them using the addresses beginning on page 6 of this handbook. This office, the Directorate for Freedom of Information and Security Review is responsible for responding to requests for records of the Office of the Secretary of Defense and the Chairman of the Joint Chiefs of Staff. Our address is the first one listed on page 6.

Frequently Asked Questions

What is the FOIA?

The FOIA is a Federal law that establishes the public's right to request existing records from Federal government agencies.

Who can file a FOIA request?

Any "person" can file a FOIA request, including U.S. citizens, foreign nationals, organizations, universities, businesses, and state and local governments.

Who is subject to the FOIA and what type of information can be requested?

The FOIA's scope includes Federal Executive Branch Departments, agencies, and offices, Federal regulatory agencies, and Federal corporations. Congress, the Federal Courts, and parts of the Executive Office of the President are not subject to the FOIA. State and local governments are likewise not subject to the Federal FOIA, but some states have their own equivalent access laws for state records. At the Office of the Secretary of Defense/Chairman of the Joint Chiefs of Staff level, you may expect to find policy, planning and budgetary information for the DoD.

What is a record?

A record is the product(s) of data compilation, such as all books, papers, maps, and photographs, machine readable materials, inclusive of those in electronic form or format, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government under Federal law in connection with the transaction of public business and in Department of Defense possession and control at the time the FOIA request is made.

Can we ask questions under the FOIA?

The FOIA does not require Federal Agencies to answer questions, render opinions, or provide subjective evaluations. Requesters must ask for existing records, such as those mentioned above.

How do I file a FOIA request?

- Label your request "Freedom of Information Act Request," preferably within the request letter and on the envelope, and address the request to the DoD Component(s) likely to have the information you seek. If you do not know which Component is likely to maintain the information you seek, you may call the Directorate for Freedom of Information and Security Review, at

(703) 697-1160/1180, or write to us at the address below (first one on page 6) for assistance.

- State your willingness to pay applicable fees. If you seek a fee waiver, provide a justification for such a waiver.

- Describe the specific records you are requesting in enough detail so that they can be located with a reasonable amount of effort. Generally, a record is reasonably described when the description contains sufficient file-related information (type of document, title, subject area, date of creation, originator, etc.); or the request contains enough event-related information (date and circumstances surrounding the event the record covers) to permit the conduct of an organized, non-random search.

Note: A sample request letter can be found at the end of this handbook.

What are the reasons for not releasing a record?

The reasons why the Office of the Secretary of Defense/Chairman of the Joint Chiefs of Staff may not release a record when a request for the record is made under the FOIA. They are:

- A reasonable search of files failed to identify repsonsive records.

- The requests if tranferred to another DoD Component, or to another Federal Agency.

- The request is withdrawn by the requester.

- The requester is unwilling to pay fees associated with a request; the requester is past due in the payment of fees from a previous FOIA request; or the requester disagrees with the fee estimate.

- A record has not been described with sufficient particularity to enable the DoD Component to locate it by conducting a resonable search.

- The requester has failed unreasonable to comply with procedural requirements, other than fee-related, imposed by DoD 5400.7-R or DoD Component supplementing regulations.

- The information requested is not a record within the meaning of the FOIA and this Regulation.

- The request is a duplicate request (e.g. a requester asks for the same information

more than once). This includes identical requests received via different means (e.g. electronic mail, facsimile, mail, courier) at the same or different times.

- Any other reason a requester does not comply with published rules other than those outlined above.

- The record is denied in whole or in part in accordance with procedures set forth in the FOIA.

What are the FOIA exemptions?

Records (or portions of records) will be disclosed unless that disclosure harms an interest protected by a FOIA exemption. The nine FOIA exemptions are cited in the Act as 5 U.S.C. § 552(b)(1) through (b)(9):

- (b)(1)—records currently and properly classified in the interest of national security;

- (b)(2)—records related solely to internal personnel rules and practices, which if released would allow circumvention of an agency function;

- (b)(3)—records protected by another law that specifically exempts the information from public release;

- (b)(4)—trade secrets and commercial or financial information obtained from a private source which would cause substantial competitive harm to the source if disclosed;

- (b)(5)—internal records that are deliberative in nature and are part of the decision making process that contain opinions and recommendations;

- (b)(6)—records which if released, would result in a clearly unwarranted invasion of personal privacy;

- (b)(7)—investigatory records or information compiled for law enforcement purposes;

- (b)(8)—records for the use of any agency responsible for the regulation or supervision of financial institutions; and

- (b)(9)—records containing geological and geophysical information (including maps) concerning wells.

Can I appeal a denial?

Yes. If your request is initially denied in whole or in part under one or more of the above exemptions or denied for some other reason, you will be advised of your appeal rights and the proper procedures for submitting the appeal which must be postmarked within 60 days of the date of the denial letter. You may also appeal any determination which you consider to be adverse. As with appeals of denied information, an appeal of an adverse determination also must be postmarked within 60 days of the date of the letter advising you of the adverse determination.

How long will it take for my request to be processed?

This is a difficult question to answer because of the size of DoD and its worldwide locations. In fairness to all requesters, DoD processes requests in order by date of eceipt and according to their complexity. These are called easy and hard queuing tracks. Whenever possible, an initial determination to release or deny a record is made within 20 working days after receipt of the request by the official who is designated to respond. However, due to the thousands of requests received annually, the DoD is unable to answer all of them within the statute's time requirements. Therefore, requests will have to wait their turn in the Components' queuing tracks.

Under certain conditions, expedited access may be granted if there is a compelling need, such as a threat to life and safety, if a person engaged in disseminating information has an urgency to inform the public on actual or alleged Federal Government activity, an imminent loss of substantial due process rights, or a humanitarian need.

Do I have to pay for a FOIA request?

The FOIA allows fees to be charged to certain types of requesters, but it also provides that waivers or reductions in fees be given if disclosing the information is in the public interest. Public interest is defined as information which significantly enhances the public's knowledge of the operations and activities of the DoD. The FOIA requires that requesters be placed into one of the below categories:

Commercial. Requesters who seek information for a use or purpose that furthers their commercial, trade, or profit interest are considered commercial requesters. Commercial requesters pay all fees for search, review and duplication.

Educational. Institutions of education, including preschools, elementary or secondary schools and institutions of higher learning, qualify as educational institutions. The records must be sought in furtherance of scholarly research. Educational requesters pay only duplication fees, unless it is determined that fees are waived or reduced in the public interest. The first 100 pages are provided at no cost.

Non-Commercial Scientific. A non-commercial scientific institution is operated solely for conducting scientific research. The records must be sought in furtherance of scientific research. Like educational requesters, these requesters pay only duplication fees, unless it is determined that fees are waived or reduced in the public interest. The first 100 pages are provided at no cost.

News Media. A representative of the news media is a person actively gathering news for an entity organized and operated to publish or broadcast news to the public. News media pay only duplication fees, unless it is determined that fees are waived or reduced in the public interest. Again, the first 100 pages are provided at no cost.

"Other" Requesters. Requesters who do not qualify in another category are considered "other" requesters, and normally make requests for agency records for their personal use. "Other" requesters receive two hours search, all review costs, and the first 100 pages at no cost.

All requesters should submit a willingness to pay fees regardless of the fee category, however, this does not mean you will be charged fees. Except for commercial requesters whose fees total more than $15, waivers are always considered. Fee waivers may be granted when disclosure of the records is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government. The following factors are weighed in making a fee waiver determination:

- The subject of the request.
- The informative value of the information to be disclosed.
- The contribution to an understanding of the subject by the general public likely to result from the disclosure.
- The significance of the contribution to public understanding.
- Disclosure of the information is not primarily in the commercial interest of the requester.
- The ability of the requester to disseminate the information.

DoD Components

Director, Freedom of Information & Security Review
1155 Defense Pentagon, Room 2C757
Washington, DC 20301-1155

Department of the Army
FOIA/Privacy Acts Office
TAPC-PDR-PF
7798 Cissna Road, Suite 205
Springfield, VA 22150-3197

Department of the Navy
Chief of Naval Operations
N09B30
2000 Navy Pentagon
Washington, DC 20350-2000

Department of the Air Force
11CS/SCSR(FOIA)
1000 Air Force Pentagon
Washington, DC 20330-1000

Defense Contract Audit Agency
Attn: CMR
8725 John J. Kingman Road
Suite 2135
Fort Belvoir, VA 22060-6219

Defense Finance & Accounting Service
Directorate for External Services
Crystal Mall 3, Rm 416
Arlington, VA 22240-5291

Defense Intelligence Agency
Attn: SVI-1
Washington, DC 20340-5100

Defense Security Service
Office of FOIA & Privacy V0020
1340 Braddock Place
Alexandria, VA 22314-1651

Defense Information Systems Agency
Regulatory/General Counsel
Attn: FOIA
701 South Courthouse Road
Arlington, VA 22204-2199

Defense Logistics Agency
Attn: CAAR
8725 John J. Kingman Road
Suite 2533
Ft Belvoir, VA 22060-6221

Defense Threat Reduction Agency
Attn:SO
45045 Aviation Drive
Dulles, VA 20166-7517

Inspector General of the Department of Defense
Chief, FOIA/PA Office
400 Army Navy Drive, Rm 405
Arlington, VA 22202-2884

National Imagery and Mapping Agency
General Counsel's Office
GCM
Mail Stop D-10
4600 Sangamore Road
Bethesda, MD 20816-5003

National Reconnaissance Office
Information Access & Release Center
Attn: FOIA Officer
14675 Lee Road
Chantilly, VA 20151-1715

National Security Agency/Central Security Service
FOIA/PA Services
N5P5
9800 Savage Road STE 6248
Ft. George G. Meade, MD 20755-6248

*NOTE: The U.S. Marine Corps is under the Department of the Navy, but you may also write to them at *Commandant of the Marine Corps (ARAD), Headquarters U.S. Marine Corps, 2 Navy Annex, Washington, DC 20380-1775.* The National Guard Bureau is under the Departments of the Army and Air Force, but you may write to them at *National Guard Bureau, Attn: NGB-ADM, (FOIA) 1411 Jefferson Davis Highway, Suite 10800, Arlington, VA 22202-3231*

Reading Rooms

The Directorate for Freedom of Information and Security Review operates the Office of the Secretary of Defense/Chairman of the Joint Chiefs of Staff Reading Room which contains DoD directives, instructions, manuals, regulations and select documents that have been requested several times under the FOIA (these are called FOIA Processed (a)(2) Records). The Reading Room is open to the general public from 8:30 a.m. - 4:30 p.m. Monday through Friday (excluding Federal holidays). Its location is in the Directorate, Room 2C757, in the Pentagon. Although no appointments are necessary, you must call the Directorate at 697-1160/1180 from the house phone once you arrive at the Pentagon in order to be escorted to the reading room within the Pentagon.

Each Component operates its own Reading Room. For hours of operation, location and access procedures, please contact the Component for which you are interested.

Electronic Access

At the DoD homepage, you will find a multitude of information including DoD's electronic reading room and the DoD Government Information Locator Service (GILS),which is essentially a card catalog that identifies public information resources. At the DoD homepage, you will also find the DoD FOIA Regulation, as well as the DoD Freedom of Information Act Annual Report. This is a detailed report which provides statistics on DoD's FOIA program such as the number of requests received, the number granted in full, and denied. The World Wide Web address for the DoD homepage and the DoD Government Information Locator Service (GILS) is:

http://www.defenselink.mil/

To access the DoD GILS system, select the "Search" button and then click on "Government Information Locator Service" for the GILS entries. Then scroll to the browse Defenselink Locator Records.

To go into the electronic reading room, click on "Publications" from the Defenselink homepage, then scroll down to Freedom of Information Act (FOIA) and click on it. Then select "Office of the Secretary of Defense/Joint Staff Electronic Reading Room." A list of titles appears. Click the title you are interested in to view that record.

Conclusion

We trust this information will be helpful to you when pursuing FOIA requests with DoD. If you have any questions, you may call (703) 697-1160/1180 and ask for a FOIA officer.

Sample FOIA Request Letter

DoD Component Head [or FOIA Officer]
DoD Component
Address
City, State, Zip Code

Dear :

This is a request under the Freedom of Information Act (5 U.S.C. 552).
I request that a copy of the following document(s) be provided to me: [identify the documents as specifically as possible].

In order to help you determine my status for the purpose of assessing fees, you should know that I am [insert one of the descriptions below]

a representative of the news media affiliated with the _____ newspaper (magazine, television station, etc.), and this request is made as part of news gathering and not for a commercial use.

affiliated with an educational or noncommercial scientific institution, and this request is made for a scholarly or scientific purpose and not for a commercial use.

affiliated with a private business and am seeking information for use in the company's business.

an individual seeking information for personal use and not for a commercial use.

I am willing to pay fees for this request up to a maximum of $___. If you estimate that the fees will exceed this limit, please inform me first.

[optional] I request a waiver of fees for this request because disclosure of the requested information to me is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the DoD and is not primarily in my commercial interest. [Include details about how the requested information will be disseminated by you to the general public.]

[optional] I also include a telephone number at which I can be contacted if necessary to discuss any aspect of my request.

Sincerely,

Name
Address
City, State, Zip Code
Telephone number [optional]