

Army Regulation 25–55

Information Management

**The
Department of
the Army
Freedom of
Information
Act Program**

**Headquarters
Department of the Army
Washington, DC
19 October 2020**

UNCLASSIFIED

SUMMARY of CHANGE

AR 25–55

The Department of the Army Freedom of Information Act Program

This administrative revision, dated 20 June 2023—

- o Changes proponency from Administrative Assistant to the Secretary of the Army to the Chief Information Officer (title page).

This major revision, dated 19 October 2020—

- o Adds discussion of general provisions (chap 1).
- o Clarifies the relationship between the Privacy Act and the Freedom of Information Act (chap 1).
- o Updates the responsibility descriptions for senior officials (chap 2).
- o Revises the chapter on exemptions (chap 4).
- o Updates the discussion of Freedom of Information Act processing procedures, appeals, and judicial actions (chap 5).
- o Updates the discussion of fee schedules and procedures (chap 6).
- o Adds information on training requirements and resources for the Freedom of Information Act (chap 7).
- o Revises the chapter on Freedom of Information Act Library requirements (chap 8).
- o Updates the discussion of reports (chap 9).
- o Updates list of Initial Denial Authorities and their responsibility (app B).
- o Restructures content in this publication; removes outdated procedural, historical, and background information; and updates paragraphs with authoritative documents and websites to create a more concise, relevant, and user-friendly document (throughout).

Information Management

The Department of the Army Freedom of Information Act Program

By Order of the Secretary of the Army:

JAMES C. MCCONVILLE
General, United States Army
Chief of Staff

Official:


KATHLEEN S. MILLER
Administrative Assistant
to the Secretary of the Army

provisions for the access and release of information from all Army recordkeeping systems, manual, and automated, in accordance with the Army information technology policy.

Applicability. This regulation applies to the Regular Army, Army National Guard/Army National Guard of the United States, U.S. Army Reserve, unless otherwise stated. It also applies to the Army and Air Force Exchange Service.

Proponent and exception authority. The proponent of this regulation is the Chief Information Officer. The proponent has the authority to approve exceptions or waivers to this regulation that are consistent with controlling law and regulations. The proponent may delegate this approval authority, in writing, to a division chief within the proponent agency or its direct reporting unit or field operating agency, in the grade of lieutenant colonel or the civilian equivalent. Activities may request a waiver to this regulation by providing justification that includes a full analysis of the expected benefits and formal review by the activity's senior legal officer. All waiver requests will be endorsed by the commander or senior leader

of the requesting activity and forwarded through their higher headquarters to the proponent. Refer to AR 25–30 for specific guidance.

Army internal control process. This regulation contains internal control provisions in accordance with AR 11–2 and identifies key internal controls that must be evaluated (see appendix C).

Supplementation. Supplementation of this regulation and establishment of command and local forms are prohibited without prior approval from the Administrative Assistant to the Secretary of the Army (AAHS–RDF), Fort Belvoir, VA 22060–5605.

Suggested improvements. Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) via email to usarmy.pentagon.hqda-cio.mbx.policy-inbox@army.mil.

Distribution. This publication is available in electronic media only and is intended for the Regular Army, Army National Guard/Army National Guard of the United States, and U.S. Army Reserve.

History. This publication is an administrative revision. The portions affected by this administrative revision are listed on the summary of change.

Summary. This regulation provides policies and procedures for the Department of the Army implementation of the Freedom of Information Act in accordance with the Department of Defense Freedom of Information Act Program pursuant to DODM 5400.07 and implements 32 CFR Part 286. This regulation promotes uniformity in the DA Freedom of Information Act Program and implements

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Glossary

Chapter 1 General Provisions

1–1. Purpose

This regulation provides policies and procedures for the Department of the Army (DA) implementation of the Freedom of Information Act (FOIA) in accordance with the Department of Defense (DOD) FOIA Program pursuant to DODM 5400.07 and implements 32 Code of Federal Regulation (CFR) Part 286. This Army regulation promotes uniformity in the DA FOIA Program and implements provisions for the access and release of information from all Army record-keeping systems, manual, and automated, in accordance with the Army information technology policy (see AR 25–1). This regulation contains the rules that govern the request for information from DA in accordance with the FOIA, Title 5, United States Code, Section 552 (5 USC 552) and explains how those requests will be processed.

1–2. References and forms

See appendix A.

1–3. Explanation of abbreviations and terms

See glossary.

1–4. Responsibilities

Responsibilities are listed in chapter 2.

1–5. Records management (recordkeeping) requirements

The records management requirement for all record numbers, associated forms, and reports required by this regulation are addressed in the Records Retention Schedule–Army (RRS–A). Detailed information for all related record numbers, forms, and reports are located in Army Records Information Management System (ARIMS)/RRS–A at <https://www.arims.army.mil>. If any record numbers, forms, and reports are not current, addressed, and/or published correctly in ARIMS/RRS–A, see DA Pam 25–403 for guidance.

1–6. Legal authority

a. FOIA (5 USC 552), as amended by the Freedom of Information Reform Act of 1986, is the statutory basis for the Army FOIA Program.

b. This regulation implements the following amendments to the FOIA, The Electronic Freedom of Information Act Amendments of 1996; the Open Government Act of 2007, Public Law (PL) 110–175; and the FOIA Improvement Act of 2016, PL 114–185.

c. Related authorities include 5 USC 552a, DODD 5400.11, and 32 CFR Part 286.

1–7. Applicability

a. This regulation governs FOIA requests received from members of the public (U.S. or foreign citizens, organizations (including State or local governments, and businesses)). It does not apply to the release of Army records to agencies or individuals in the Federal Government for use in official business.

b. Soldiers and DA Civilian employees, as private citizens, may request records under FOIA. They must prepare requests at their own expense and on their own time. They may not use Government equipment, supplies, or postage to prepare personal FOIA requests. It is not necessary for Soldiers or DA Civilian employees to go through the chain of command to request information under FOIA. However, Soldiers and DA Civilian employees are encouraged to seek guidance from their chain of command for ways to expedite and clarify any requests and possibly eliminate unnecessary requests.

c. This regulation applies Armywide and implements DOD guidance. DOD guidance applies to the Office of the Secretary of Defense, Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, combatant commands, the military departments, DOD agencies, and field activities (hereafter referred to as “DOD components”), and takes precedence over all component regulations that supplement the DOD FOIA Program. A list of DOD components is available at <https://dpcl.d.defense.gov/privacy/sornsindex/dod-component-notice/address-directory/>.

d. This regulation does not require that an individual, or legal counsel for that individual, submit a FOIA request to receive from the Government either those records required by due process to be delivered to an accused pursuant to the courts-martial process or those records necessary for a Soldier facing an adverse administrative action to exercise

due process rights granted by the law and regulation applicable to that adverse action. Requests for such Army records should be referred to the servicing Office of the Staff Judge Advocate for processing. In such cases, the servicing Staff Judge Advocate may determine redactions of documents are appropriate when the redacted portion of the information would not substantially impair the due process rights of the accused or respondent. As a general rule, (i) portions and pages of records that do not pertain to the adverse action should be redacted; (ii) pages containing both responsive and nonresponsive information should be identified and redacted accordingly; and (iii) the names of witnesses, accusers, and other relevant persons associated with the adverse action should not be redacted, but other third-party names and other personally identifiable information (such as Social Security numbers, home addresses, and phone numbers) should be redacted from the relevant portions of the records unless doing so would substantially impair the individual's due process rights. This does not apply to civilian personnel actions in paragraph 1-7d.

e. NSA records are subject to the provisions of this regulation, only to the extent the records are not exempt under PL 86-36.

f. This regulation applies to the following:

- (1) Regular Army.
- (2) Army National Guard/Army National Guard of the United States.
- (3) U.S. Army Reserve.
- (4) Organizations subject to the FOIA for which DA is the Executive Agent.

g. Requests for DA records processed under FOIA may be denied only in accordance with FOIA (5 USC 552), as implemented by this regulation.

h. Release of some records may be affected by the programs that created them. Applicable programs are discussed in the following regulations:

- (1) AR 20-1.
- (2) AR 25-22.
- (3) AR 27-10.
- (4) AR 27-20.
- (5) AR 27-40.
- (6) AR 27-60.
- (7) AR 36-2.
- (8) AR 40-66.
- (9) AR 40-400.
- (10) AR 70-31.
- (11) AR 190-45.
- (12) AR 195-2.
- (13) AR 360-1.
- (14) AR 380-5.
- (15) AR 380-10.
- (16) AR 381-45.
- (17) AR 385-10.
- (18) AR 530-1.
- (19) AR 600-8-104.
- (20) AR 600-85.
- (21) AR 608-18.
- (22) AR 690 series for Civilian Personnel.
- (23) DA Pam 50-5.
- (24) DA Pam 385-40.
- (25) DA Pam 385-90.

(26) Federal Acquisition Regulation, DOD Federal Acquisition Regulation Supplement, and the Army Federal Acquisition Regulation Supplement (AFARS). AFARS is available at <https://far-site.hill.af.mil/reghtml/regs/other/afars/foreword.htm>.

1-8. General requirements

a. Compliance with the Freedom of Information Act. Army personnel are expected to comply with the FOIA, DoD policy, this regulation, and Army FOIA policy in both letter and spirit. This strict adherence is necessary to provide uniformity in the implementation of the Army FOIA Program and to create conditions that will promote public trust.

b. Openness with the public. DA will conduct its activities in an open manner consistent with the need for security and adherence to other requirements of law and regulation. Records not specifically exempt from disclosure under

FOIA will, upon request, be made readily accessible to the public in accordance with rules promulgated by competent authority, whether or not FOIA is invoked.

(1) *Operations security.* DA officials who release records under the FOIA must also consider operations security (OPSEC). The Army implementing regulation for OPSEC is AR 530–1.

(2) *DA Form 4948–R (Freedom of Information Act (FOIA)/Operations Security (OPSEC)).* This form lists references and information frequently used for FOIA requests related to OPSEC. Persons who routinely deal with the public (by telephone or letter) on such requests should keep the form on their desks as a guide.

c. Avoidance of procedural obstacles. Army activities will ensure that procedural matters do not unnecessarily impede a requester from promptly obtaining DA records. The Army will assist requesters to help them understand and comply with procedures established by this regulation and any supplemental regulations or instructions DOD has published. Coordination of referral of requests with the Army FOIA Office should be made by telephone or email, not regular mail, in order to facilitate response to the requester in a timely manner. Disposition and coordination among IDAs should not involve the DA FOIA office.

d. Contact. If a request fails to meet minimum requirements, activities will contact the requester and inform them of what is required to perfect or correct the request, or to limit the scope to allow for the most expeditious response. The statutory 20 working day time limit applies upon receipt of a perfected FOIA request.

e. Legal Reviews Before releasing the responsive records or portions thereof, FOIA personnel must ensure their servicing legal office reviews the documents and provides a written legal opinion concerning the releasability of the requested records. The legal opinion must cite specific exemptions and appropriate justification, and identify if the records were processed under FOIA, the Privacy Act (including the applicable systems notice), or both.

1–9. Public information

a. The public has a right to information concerning activities of the U.S. Government. Army policy is to conduct activities in an open manner and provide the public with the maximum amount of accurate and timely information, consistent always with the legitimate public and private interests of the American people. A record requested by a member of the public that follows rules established by proper authority in DOD will be withheld only when it is exempt from mandatory disclosure under FOIA.

b. If the requested records are in a Privacy Act (PA) system of records, the records will not be released without a written request under FOIA, unless they are otherwise releasable under the PA.

c. The DA FOIA Office Chief, as the DA FOIA Public Liaison, is responsible for working with requesters who have any concerns about the service received from any Army FOIA office, reducing delays in the processing of FOIA requests, increasing transparency and understanding of the status of requests, and helping to resolve disputes.

1–10. Control system

A request for records that invokes FOIA will enter a formal control system designed to ensure compliance with FOIA. A release determination must be made and the requester informed within the time limits specified in this regulation. Any request for Army records that explicitly or implicitly cites FOIA will be processed under the provisions of this regulation.

1–11. General provisions for controlled unclassified information

a. In addition to classified information, certain types of unclassified information also require application of access and distribution controls, as well as protective measures, for a variety of reasons. In accordance with DODD 5143.01 (Under Secretary of Defense for Intelligence (USD (I))), such information is referred to collectively as controlled unclassified information (CUI). CUI includes records marked for official use only (FOUO), law enforcement sensitive (LES), DOD Unclassified Controlled Nuclear Information, Limited Distribution, markings developed and used by other agencies, and certain foreign government information.

b. FOUO information is defined as information that has not been given a security classification according to the criteria of an executive order, but which may be withheld from the public because disclosure would cause harm to an interest protected by one or more of the FOIA exemptions (see chap 4). For additional information on CUI, see DODM 5200.01, Volume 4 or AR 380–5.

c. Dissemination of unclassified information concerning physical protection of special nuclear material.

(1) Unauthorized dissemination of unclassified information pertaining to security measures, including security plans, procedures, and equipment for the physical protection of special nuclear material, is prohibited under 10 USC 128.

(2) The Deputy Chief of Staff, G–3/5/7 (DCS, G–3/5/7) will use this statute as the IDA to withhold any such information only if and to the extent it is determined that the unauthorized dissemination of such information could

reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of illegal production of nuclear weapons and the theft, diversion, or sabotage of special nuclear materials, equipment, or facilities.

(3) In making such a determination, Army personnel may consider what the likelihood of an illegal production, theft, diversion, or sabotage would be if the information proposed to be withheld was never disseminated.

(4) Army employees will not use this authority to withhold information from the appropriate committees of Congress.

1–12. Prompt action on requests and final response determinations

a. Generally, when a member of the public complies with the procedures established in this regulation or other instructions for obtaining DA records, and the request is received by the official designated to respond, Army activities will endeavor to provide a final response determination within the statutory 20 working days. If a significant number of requests, or the complexity of the requests, prevent a final response determination within the statutory time period, Army activities will advise the requester of the delay in the interim. A final response determination will notify the requester that the records are being released in full, are being partially withheld, are being withheld in full under an appropriate FOIA exemption, or cannot be provided for one or more of the other reasons described in paragraph 1–11.

b. Interim responses acknowledging receipt of the request, negotiations with the requester concerning the scope of the request, the response timeframe, and fee agreements are encouraged. However, such actions do not constitute a final response determination pursuant to FOIA.

c. The 20-working day period prescribed under FOIA (5 USC 552(a)(6)) starts when the request--

(1) Is in writing (letter, email, or facsimile);

(2) Is received by the proper official designated to answer the request;

(3) Meets the procedural requirements of this regulation for a “perfected request,” which includes the following:

(*a*) A reasonable description of the record or records requested.

(*b*) The requester’s contact information (address, email, or telephone number);

(*c*) Indication of a willingness to pay fees associated with the processing of the request or why a waiver of fees may be appropriate.

d. If the responsible Army activity does not have the responsive record, the activity should refer the request to the correct activity.

e. All requests should refer explicitly or implicitly to FOIA to ensure prompt recognition as FOIA actions.

f. “Other Reasons” cited upon initial determination (the first decision made to not comply with a request for records) may also include the following:

(1) *Referral.* The request was transferred to another Army activity, DOD component, or Federal agency for action.

(2) *Reasonable search.* A reasonable search of files failed to identify responsive records, or no search was undertaken because the Army activity determined it would not locate records responsive to the request.

(3) *Failure of requester to reasonably describe record.* The request could not be acted on because the requester did not reasonably describe the record or records being sought.

(4) *Other failures by requester to comply with published rules and/or directives.* The requester failed to follow published rules concerning time, place, fees, and procedures.

(5) *Request withdrawn by requester.* A requester withdrew a request and/or appeal.

(6) *Not an agency record.* A requester was provided a response indicating the requested information was not an agency record.

g. Requesters should attempt to send requests to the office that has the desired record or to an Army activity that may have the responsive records. If unable to determine where a request should be forwarded, requesters should contact the U.S. Army Freedom of Information Act Office 9301 Chapek Road, Building 1458, Fort Belvoir, VA 22060–5605. The office can supply Army activity addresses, as needed. Otherwise, a FOIA request for the Army can also be submitted at usarmy.belvoir.hqda-oaa-ahs.mbx.rmda-foia@mail.mil.

h. See AR 25–22 for PA procedures.

1–13. Combatant commands

a. Combatant commands’ FOIA programs are under the jurisdiction of the Office of the Secretary of Defense instead of the administering military department or the Chairman of the Joint Chiefs of Staff. This is an exception to DODD 5100.03 (Support of the Headquarters of Combatant and Subordinate Commands) in that it authorizes and requires combatant commands to process FOIA requests in accordance with 32 CFR, Part 286 and DODM 5400.07.

b. Documents originated by the Military Service components of the combatant commands while performing joint exercises or operations under combatant command authority are joint in nature and under the cognizance of the combatant commands.

c. Documents created for a combatant command, but located within a Defense Criminal Investigative Organization or accident investigation file at the Military Service component, are Service records and the release, initial denial, and appellate authorities remain with the Service or the appropriate Defense Criminal Investigative Organization. However, the Military Service component will consult with the responsible combatant command during the review process.

d. Documents created by the Military Service components of the combatant commands below the headquarters level are considered Service records (such as base support personnel or logistical records).

1–14. Processing requirements

a. *Processing factors.* An activity will estimate how long it will take to process the request. The activity may consider the number of records requested, the number of pages involved in processing the request, and the need for consultations or referrals. Activities should advise requesters of their estimated processing time and when appropriate, will offer the requester an opportunity to narrow or modify their request.

b. *Multi-track processing.* When an Army activity has a significant number of pending requests that prevent a response determination from being made within 20 working days (excepts Saturdays, Sundays, and Federal holidays), the requests will be processed in a multi-track processing system, based on the date of receipt, amount of work and time involved in processing the requests, and whether any request qualifies for expedited processing. Army activities may establish as many processing queues as they want. However, as a minimum, they will establish three processing tracks, all based on a first-in, first-out concept, and rank ordered by the date of receipt of the request. One track will be a processing queue for expedited requests, one track will be for simple (nonexpedited) requests, and one track will be a processing queue for complex requests. Each Army activity will determine whether a request is simple or complex. This multi-track processing system does not remove an activity's responsibility to exercise due diligence in processing all requests in the most expeditious manner possible. All Army activities must designate a specific track for requests that are granted expedited processing in accordance with the standards set forth in paragraph 1–13c.

c. *Expedited processing.* Army activities, including appellate authorities, will review FOIA requests for expedited processing using the criteria from, and made by the requested pursuant to, 32 CFR 286.8(e).

d. Requesters who do not meet the criteria for expedited processing, will be given the opportunity to limit the scope of their request to qualify for expedited processing.

Chapter 2 Responsibilities

2–1. Administrative Assistant to the Secretary of the Army

a. The AASA is responsible for issuing policy and establishing guidance for the Army FOIA Program. The AASA is responsible for approving exceptions to this regulation that are consistent with controlling law and regulations. The AASA may delegate the approval authority, in writing, to a division chief, within that Army activity in the grade of at least O–5 or civilian equivalent.

b. Within AASA, U.S. Army Headquarters Services, Records Management and Declassification Agency is responsible for developing and recommending policy concerning the Army FOIA Program and overall execution of the program. AASA is the principal advisor to the Secretary of the Army and the Chief of Staff of the Army for the Army's FOIA Program.

c. The AASA is responsible for implementing the Army's FOIA Program. This responsibility includes the following:

(1) Developing and issuing policy guidance for the program in consultation and coordination with the Army General Counsel.

(2) Ensuring that the Army's FOIA Program complies with the FOIA Amendments of 1996 (5 USC 552), as amended; DOD Manual 5400.07; 32 CFR 286; and other Federal regulations.

d. The Senior Counsel, OAASA on behalf of the AASA and in coordination with the Office of the Army General Counsel will—

(1) Provide legal advice relating to FOIA and other laws and Federal regulations.

(2) Serve as the legal advisor to the Army Secretariat on FOIA issues.

(3) Review requests for records that are not clearly within the functional areas of responsibility of any other IDA, designate the most appropriate agency to provide a response, and assign such records to that agency for review and

redaction under FOIA. Any agency so designated under this paragraph will fully cooperate with the Senior Counsel in carrying out the responsibilities assigned to that agency under this paragraph.

e. The Chief, Army FOIA Office, Records Management and Declassification Agency, on behalf of the AASA will—

- (1) Develop and recommend policy.
- (2) Execute duties as the FOIA Public Liaison for DA.
- (3) Promote FOIA awareness throughout DA.
- (4) Represent DA in DOD policy meetings.
- (5) Review DA forms for compliance with FOIA.
- (6) Ensure that reports required by FOIA and DOD are provided.
- (7) Establish FOIA educational resources.
- (8) Provide FOIA guidance and assistance to Army activities.
- (9) Ensure that Army FOIA websites comply with DOD requirements.
- (10) Assist in the reduction of any delays in responding to requests.
- (11) Increase transparency and understanding of request status.
- (12) Assist in dispute resolution.
- (13) Facilitate communication between FOIA requesters and FOIA offices.
- (14) Manage the Army FOIA Library.

2–2. Principal Officials of Headquarters, Department of Army staff and Commander, Army commands, Army service component commands, and direct reporting units

Principal officials of HQDA, and the commanders of ACOMs, ASCCs, and DRUs, as listed in AR 10–87, will—

- a.* Supervise and execute the Army FOIA Program in functional areas and activities under their responsibility.
- b.* Designate a FOIA program manager or FOIA official for each ACOM, in writing, and inform the Army FOIA Office of the appointment.
- c.* On behalf of the ACOMs, ASCCs, and DRUs, the FOIA program managers at each command or installation will—
 - (1) Be responsible for the execution of the Department of the Army FOIA program for the command.
 - (2) Ensure that the Army’s FOIA Program complies with 5 USC 552, as well as other FOIA amendments and other Federal regulations.
 - (3) Process FOIA requests within the statutory guidelines.
 - (4) Maintain narrative and statistical data for preparation of required FOIA reports (for example, the FOIA Annual Report).
 - (5) Serve as the staff advisor on FOIA matters.
 - (6) Ensure that DA personnel are aware of any new requirements or changes to the Army FOIA Program.
 - (7) Establish a team of FOIA personnel or action officers to assist with the workload, when required.
 - (8) Ensure action officers forward responsive documents for review by the DOD FOIA Policy Office when issues raised are of significance, or require special attention or guidance, and implement the DoD “Significant FOIA” notification process.
 - (9) Ensure action officers coordinate and forward responsive documents to the proper Army IDA or DoD component FOIA Office.
 - (10) Coordinate legal reviews for proposed denials of records with the appropriate Office of the Staff Judge Advocate.
 - (11) Coordinate with and provide records and supporting documentation to DOD, the Army FOIA Office, and legal personnel, when requested, and to OCLL when there is Congressional interest in the documents subject matter.
- d.* Heads of Joint Service agencies or commands for which the Army is the Executive Agent or has responsibility for providing fiscal, logistical, or administrative support, will adhere to the policies and procedures in this regulation.
- e.* The Chief Executive Officer, Army and Air Force Exchange Service, is responsible for the supervision of the FOIA program within that organization in accordance with this regulation.
- f.* The principal official of each Army activity is responsible for the designing and implementation of educational and training programs on the provisions and requirements of this regulation and unique to their command.
 - (1) Ensure all members of the activity develop a general understanding of the DA FOIA program.
 - (2) Ensure relevant personnel within the activity are trained on the DA FOIA program and their internal command processes.
 - (3) Annually coordinate with RMDA to review and revise command training products.

2–3. The Judge Advocate General

TJAG---

- a.* Provides legal advice and guidance to FOIA officials, commanders, and supervisors on requests for records under the FOIA and PA. Serves as FOIA legal advisor to the Army staff.
- b.* Serves, through the Litigation Division, as a liaison between the Army and the U.S. Department of Justice.
- c.* Is authorized to act as the Initial Denial Authority on requests for records relating to claims, courts-martial, legal services, administrative investigations (other than those initiated in response to an equal opportunity or equal employment opportunity complaint), and similar legal records (see app B).
- d.* Exercises technical supervision over attorneys under TJAG's qualifying authority which includes legal training and professional guidance relative to FOIA actions.

2–4. General Counsel

- a.* Develops and issues in conjunction with the AASA, policy guidance for the Army FOIA Program.
- b.* Coordinates legal and policy advice for the Army FOIA Program; determines the DA position on legal questions or procedure.
- c.* Serves as the appellate authority for FOIA appeals as described in chapter 5.
- d.* Serves as the point of contact for FOIA and legal matters between DA and the Office of the General Counsel, DOD.

2–5. Servicing legal offices

Servicing legal offices provide legal advice to FOIA officials, commanders, and supervisors on requests for records under the FOIA and PA.

Chapter 3 Record Release

3–1. General provisions

- a.* Records that meet the exemption criteria of the FOIA may be withheld from public disclosure and need not be published in the Federal Register, made available in the online FOIA library, or provided in response to a FOIA request.
- b.* The Army FOIA library must meet the requirements of Section (a)(2)(D) of the FOIA by making records available to the public.
- c.* Records that have been released under FOIA and are, or are likely to become, the subject of subsequent FOIA requests for substantially the same records; or have been requested three or more times will be placed in the FOIA library.
- d.* FOIA personnel must contact the Army FOIA Office to coordinate the placement of records in the FOIA Library.

3–2. Casualty records

Army activities should consult with the Army Casualty and Mortuary Affairs Operations Division before establishing release and referral procedures for processing casualty-related reports for the primary next of kin. Casualty related requests are not processed under the tenets of FOIA, unless explicitly submitted as a FOIA request. For information about the handling of casualty records for release outside the scope of FOIA, see DODI 1 300.18; AR 638–8; and AR 638–34.

3–3. Records Involving Juveniles

In accordance with AR 190–45, military police records identifying juveniles as offenders will be released only to individuals with a clear reason to know the identity of the juvenile. In distributing information about juveniles, the installation's FOIA office will ensure that only individuals with a clear reason to know the identity of a juvenile are provided the personally identifiable information on the juvenile. For example, a garrison commander is authorized to receive pertinent information on juveniles under that commander's jurisdiction. When an Army law enforcement report identifying juvenile offenders must be provided to multiple commanders or supervisors, the installation FOIA office must sanitize the reports to withhold juvenile information not pertaining to that commander's area of responsibility.

3-4. Public domain

a. Nonexempt records released under the authority of this regulation are considered to be in the public domain. Such records may also be made available in the Army online FOIA library to facilitate public access.

b. Exempt records disclosed without authorization by the appropriate Army FOIA official do not lose their exempt status. Also, while authority may exist to disclose records to individuals in their official capacity, if the same individual seeks the records in a private or personal capacity, the records must be processed under FOIA.

3-5. Records and searches

a. A records that exists and is in DA possession and control when searched for is subject to the FOIA. . Army activities are not obligated to create, compile, or obtain records, or answer questions to satisfy a FOIA request. However, Army activities may compile a new record when doing so would result in a more useful response to the requester or would be less burdensome to the activity than providing existing records. For example, if a FOIA requester wants a list of all travel locations for a single senior official, the Army activity might compile a list of travel locations instead of processing a large number of travel documents. Any such compilation should be coordinated with and agreed to by the requester. The cost of creating or compiling such a record may not be charged to the requester unless the fee for creating the record is equal to or less than the fee that would be charged for providing the existing record. Fee assessments must be in accordance with 32 CFR 286, Subpart F.

b. Army activities are required to make reasonable efforts to conduct electronic searches for responsive documents, except when the searches would cause significant interference with the operation of automated information systems.

c. If extensive monetary or personnel resources are needed to conduct an electronic search, Army activities should take that into account when determining whether they are making reasonable efforts to search for electronic records.

d. Creating a computer program that produces specific requested fields or records contained within a well-defined database structure usually constitutes a “reasonable effort.” However, creating a computer program to merge files with disparate data formats and extract specific elements from the resultant file is considered a special service instead of a reasonable effort.

e. Army activities are not required to expend Army funds to establish data links that provide real-time or near-real-time data to a FOIA requester.

3-6. Record Requests

a. The requester is responsible for identifying the record he or she is requesting. The requester must provide a description of the desired record that enables the Government to locate the record with a reasonable amount of effort.

b. A reasonable description offers enough information to permit an organized, nonrandom search for the record based on the Army activity’s filing arrangements and existing retrieval systems. The activity’s decision on the reasonableness of the description must be based on knowledge of its files, not on the potential volume of records that may be located and the concurrent review effort to determine releasability.

c. When an Army activity receives a request that does not reasonably describe the requested record, the activity will contact the requester and afford them the opportunity to clarify the request. Activities are not obligated to act on the request until the requester clarifies it. When necessary and practicable, activities will offer assistance to the requester in reformulating the request to reduce the burden on the activity in complying with the FOIA. FOIA personnel will contact the requester in writing or by electronic means to describe the defects in the requests; explain the types of information required; ask the requester to provide the missing information in a timely manner; and explain that the activity will not act on the request until the requester provides the required information.

d. To the extent possible, requesters should include specific information to help personnel identify the requested records, such as the date, title, or name, author, recipient, subject matter of the record, case number, file designation, or reference number. Before submitting their requests, requesters may contact the activity’s FOIA point of contact to discuss the records they are seeking in order to receive assistance in describing the records.

e. Requesters must indicate their willingness to pay fees associated with processing the request.

f. Requesters may specify the preferred form or format (including electronic) for the requested records. Army activities will accommodate the request if the record is readily reproducible in that form or format.

g. Requesters must provide contact information, such as a telephone number, email address, and/or mailing address, to assist the Army activity in communicating with and providing released records to them.

3-7. Records management–Freedom of Information Act files

FOIA records will be maintained and disposed of in accordance with the National Archives and Records Administration General Records Schedule and DOD component records schedules. The Administration and DOD guidelines are

the source documents for Army disposition instructions and schedules as specified in AR 25–400–2. The Army Records Management Information System (ARIMS) or at <https://www.arims.army.mil/arims/app/mainpage.aspx>.

3–8. File of initial denials

Each Army activity will maintain copies of all initial withholdings or denials in a form suitable for rapid retrieval, periodic statistical compilation, and management evaluation. Records denied for any of the reasons described in this regulation will be maintained for a period of 6 years to meet the statute of limitations requirement. Records will be maintained in accordance with AR 25–400–2.

3–9. Special mail services

Army activities are authorized to use registered mail, certified mail, certificates of mailing, and return receipts. However, their use should be limited to instances when special mail services are prudent in order to establish proof of dispatch or receipt of FOIA correspondence. Requesters will be notified that they are responsible for the full costs of special services.

3–10. Relationship between the Freedom of Information Act and the Privacy Act

a. Not all requesters are knowledgeable about the appropriate statutory authority to cite when requesting records, nor are they aware of appeal procedures. Sometimes, they may cite neither Act, but imply one or both. For these reasons, the following guidelines are provided to ensure that requesters are given the maximum amount of access rights under both Acts.

b. If the record is required to be released under FOIA, the PA does not bar its disclosure. Unlike the FOIA, the PA applies only to U.S. citizens and aliens lawfully admitted for permanent residence.

c. Requesters who seek records about themselves in a PA system of records, and who cite or imply only the PA, will have their requests processed under the provisions of both the PA and FOIA. If the PA system of records is exempt from the provisions of 5 USC 552a(d)(1), and if the records, or any portion thereof, are exempt under FOIA, the requester will be advised with the appropriate PA and FOIA exemption. Appeals will be processed under both Acts.

d. Requesters who seek records about themselves that are in both a PA system of records, and in records contained outside a PA system of records, will have their requests processed under both acts. Appeals will be processed under FOIA and/or the PA, as appropriate.

e. Requesters who seek access to agency records that are not part of a PA system of records, and who cite or imply the PA and FOIA, will have their requests processed under the FOIA because the PA does not apply to these records. Appeals will be processed under the FOIA.

f. Requesters who seek access to agency records, and who cite or imply the FOIA will have their requests and appeals processed under FOIA.

g. Requesters who seek records about themselves that are not in a PA system of records and who cite or imply the PA will have their requests processed under FOIA. Appeals shall be processed under FOIA.

h. Final response letters will advise requesters which statutes were used and will include appeal rights.

i. Do not deny individuals access to personally identifiable information about themselves that would otherwise be releasable to them in accordance with either the PA or FOIA solely because the individuals' request failed to cite or imply either the PA or FOIA, or cited the wrong act, regulation, manual, or instruction.

j. When a first-party requester cites or implies the PA, perform the following analysis:

(1) Is the request from a living United States citizen or an alien lawfully admitted for permanent residence?

(2) Is the individual requesting an agency record?

(3) Are the records within a PA system of records that are filed and retrieved by an individual's name or other personal identifier?

(a) If the answer is “yes” to all of three questions, then process the request under the PA.

(b) If the answer to one or more of these questions is “no,” process the request under FOIA.

(4) Does the information requested pertain exclusively to the requester?

(a) If the answer is “yes”, no further consideration of FOIA exemptions required. Release all information unless a PA exemption authorizes withholding.

(b) If the answer is “no,” process the information that is not about the requester under the FOIA and withhold only if a proper FOIA exemption applies. Release all information pertaining to the requester unless a PA exemption authorizes withholding.

3–11. Referral guidance

a. Referral and consultation policy is based on the concept of the originator of a record making a release determination on its information. If an Army activity receives a request for records that another Army activity originated, it will contact the originating activity to determine if it also received the request and, if not, obtain concurrence from the originating activity to refer the request. In this referral situation, the activity will provide the record and a recommendation as to its release along with the referral action.

b. Army activities receiving a misdirected FOIA request for records originating with another DOD Component will refer the FOIA request to the correct record custodian and inform the receiving organization of the date the FOIA request was originally received. The activity also will advise the FOIA requester of the referral. If responsibility for the requested records rests with a non-DOD agency (for example, U.S. Department of State), the Army activity need only advise the FOIA requester to submit the FOIA request to the proper agency.

c. Before notifying a requester of a referral, the Army activity receiving the initial request will consult with the other activity to determine if that activity's association with the material is exempt. If the association is exempt, the Army activity receiving the initial request will protect the association and any exempt information without revealing the identity of the protected Army activity. The protected Army activity should be responsible for submitting the justifications required in any litigation.

d. If the association of the other Component or activity is not exempt, and the Component or activity confirms it has the requested records, or verifies that it is the proper custodian for that type of record, the requester will be notified of the referral.

e. In cases when the Army activity receiving the request has reason to believe the existence or nonexistence of the record may itself be classified, that activity will consult the Component or activity with custody over the records in question before referring the request. If the Component or activity determines that the existence or nonexistence of the records is itself classified, the Army activity must notify the requester that it can neither confirm nor deny the existence of the record, and no referral will take place.

f. Requested records may be located at several Army offices. The official receiving the FOIA request will refer the request to applicable offices for review and release of responsive records under the FOIA, and a direct reply to the requester.

g. Any Army activity receiving a request that has been addressed to the wrong activity will refer the request to the proper activity and advise the requester. The FOIA provides that the standard 20-day time period begins on the date the Army activity first received the request, but no later than 10 days after any Army activity designated to receive FOIA requests first received the request.

h. Accordingly, if a requester mistakenly sends a FOIA request to an agency component that is designated to receive FOIA requests but is not the proper component to process that request, the receiving component is obligated to route the misdirected request to the appropriate component within 10 days of receiving the request. (for example, Army receives a request for Air Force or Army Materiel Command receives a request for a civil works strategic plan that should go to the Corp of Engineer).

i. FOIA requests for information that pertain to agencies outside of DA---

(1) An Army activity may refer a FOIA request for a record that originated outside DA or that is based on information obtained from an outside agency to that agency for direct response to the requester after coordination with the outside agency if that agency is subject to FOIA. Otherwise, the Army activity must respond to the request.

(2) Requests for investigative, intelligence, or any other type of records that are on loan to DOD for a specific purpose, are restricted from further release, and are so marked will be referred to the agency that provided the records. However, if the records are for investigative or intelligence purposes and, the outside agency requires anonymity, an Army activity will respond directly to the requester only after coordinating with the outside agency.

(3) Army activities that receive requests for records that originated with or contain equities from the National Security Council, the White House, or the White House Military Office will process the requests. The records will be forwarded through the DA FOIA Office to the Office of Freedom of Information and Security Review. That office will coordinate with the National Security Council, White House, or White House Military Office and return the records to the originating agency after coordination for response to the FOIA requester.

(4) On occasion, DA receives FOIA requests for U.S. Government Accountability Office (GAO) records containing Army information. Although GAO is outside the executive branch and not subject to FOIA, all FOIA requests for GAO documents containing Army information received either from the public or on referral from GAO will be processed under the provisions of this regulation.

3–12. Nonresponsive information in responsive records

a. Army activities should generally not release to a FOIA requester *records* that are non-responsive to that requester’s FOIA request, but Army activities should generally release non-responsive *information* within an otherwise responsive record to the extent the non-responsive information is not exempt from disclosure. In distinguishing non-responsive information from non-responsive records, Army activities are encouraged to consult the Department of Justice Guide to the Freedom of Information Act (available at <https://www.usdoj.gov/oip/foia-guide.html>).

b. Army activities may withhold non-responsive information within a responsive record only if:

- (1) The non-responsive information is exempt from disclosure; or
- (2) After determining that processing the non-responsive information may cause a burden to the Army activity or that processing the non-responsive information is not in the best interest of the FOIA requester, the Army activity consults with the FOIA requester and obtains his or her consent (preferably in writing) to the redaction of non-responsive information without a FOIA redaction. If the FOIA requester agrees, the responsive information will contain the annotation “non-responsive,” and the requester’s consent will be documented in the response letter.

3–13. Use of contractors in administration of the Freedom of Information Act

a. This section provides guidance on the use of contractors performing FOIA administration at Army activities. Pursuant to DODI 1100.22, Office of Management and Budget Circular No. A–76, and Office of Federal Procurement Policy Letter 11–01, DOD components may not outsource certain functions known as “inherently governmental activities” (for example, “inherently governmental FOIA functions”) to contractors.

b. Inherently governmental FOIA functions include:

- (1) Formulating or approving FOIA policies and procedures.
- (2) Making final determinations on whether to treat an incoming correspondence as a FOIA or PA request.
- (3) Making denial or release determinations of information requested pursuant to the FOIA.
- (4) Deciding any issues regarding the scope or interpretation of a FOIA request.
- (5) Determining the appropriateness of claimed exemptions.
- (6) Approving the approach taken in negotiations or discussions with the FOIA requester.
- (7) Deciding administrative appeals.
- (8) Conducting final review of all outgoing correspondence, memorandums, and release packages.
- (9) Making final determinations on requests for expedited processing, fee category, and fee waivers.
- (10) Executing documents for filing in litigation pursuant to the FOIA if the documents assert an official position of DOD, any DOD Components, or any other Federal agencies. Contractors may prepare and execute documents describing their own actions while processing FOIA requests.

c. Examples of FOIA functions and duties that contractors may perform include, but are not limited to:

- (1) Redacting documents.
- (2) Preparing correspondence for signature by a U.S. Government official.
- (3) Communicating with a FOIA requester concerning the status of the FOIA request.
- (4) Recommending information to be denied.
- (5) Entering relevant information into the Army’s FOIA tracking system.

Chapter 4 Exemption

4–1. General provisions:

a. This section is not an exhaustive explanation of the applicability of the FOIA exemptions. For more detailed explanations, see 32 CFR 286, Subpart C. Army activities may also consult the Department of Justice Guide to the Freedom of Information Act (available at <https://www.usdoj.gov/oip/foia-guide.html>).

b. Information responsive to a FOIA request will be withheld only if the Army activity reasonably foresees that disclosure would harm an interest protected by one or more of the FOIA exemptions, or disclosure is prohibited by law.

c. Under this standard, the content of a particular record should be reviewed and a determination made about whether the Army activity reasonably foresees that disclosing that particular document, given its age, content, and character, would harm an interest protected by the applicable exemption. Mere speculative or abstract fears, or fear of embarrassment, are insufficient bases for withholding information.

4-2. Exemption policies

a. The Army fully supports the “presumption of openness.” Consequently, Army policy is to make records publicly available unless the record qualifies for exemption under one or more of the nine FOIA exemptions.

b. Information responsive to a FOIA request will be withheld only if the Army activity reasonably foresees that disclosure would harm an interest protected by one or more FOIA exemptions, or disclosure is prohibited by law. The foreseeable harm standard does not apply to information exempt under FOIA exemption 3.

(1) Army activities will withhold information under FOIA only if the activity determines that disclosure would harm an interest protected by an exemption or disclosure is prohibited by law.

(2) Activities will consider whether partial disclosure of information is possible whenever the activity determines that full disclosure of a requested record is not possible (see 32 CFR 286, Subpart C).

(3) Activities will take reasonable steps necessary to segregate and release nonexempt information.

c. When responding to a request for records and one or more of the nine FOIA exemptions apply, the denial letter will include the following:

(1) The FOIA request tracking number.

(2) The name and title of the initial denial authority (IDA) even if the IDA is not the individual signing the letter.

(3) A reasonable estimate of the volume of the records denied or withheld in part. The response should state the number of pages or some other reasonable form of estimation unless providing such an estimate would harm an interest protected by a FOIA exemption.

(4) A brief statement of the reasons for the denial in whole or part; the FOIA exemption; and when information is withheld pursuant to exemption 1, applicable section or sections of the appropriate executive order used to deny the information.

(5) Instructions on how to submit an appeal to the appellate authority, which includes the appellate authority's duty title and mailing address. The denial letter will also include a statement advising the requester that an appeal of the adverse determination must be transmitted electronically or postmarked no later than 90 days after the date of the denial letter.

(6) A statement advising the requester of the right to seek dispute resolution services from the DA FOIA Public Liaison or Office of Government Information Services. Sample response letter language:

(7) For Any Further assistance or to discuss any aspect of your FOIA request, you may contact the Army FOIA Public Liaison by email at usarmy.hqda-oaa-ahs.mbx.rmda-foia-public-liaison@mail.mil, or by phone at (571) 515-0306. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

(8) If you are not satisfied with the response to this request, you may appeal this determination in writing within 90 days of the date of this letter, by submitting your appeal in writing through this office [responding command Army FOIA Office] to the Secretary of the Army (Office of the General Counsel), Room 3C546, 104 Army Pentagon, Washington, DC 20310-0104.

d. When a FOIA requester is assessed fees for processing a FOIA request, the FOIA requester's fee category will be specified in the final response letter. Army activities also will provide the FOIA requester with a complete cost breakdown (for example, 15 pages of office reproduction at 15 cents a page; 3 hours of professional-level search at \$48 an hour) in the response letter. As an alternative, a copy of the DD Form 2086 (Record of Freedom of Information (FOI) Processing Cost) or DD Form 2086-1 (Record of Freedom of Information (FOI) Processing Cost for Technical Data) may be enclosed with the response letter.

e. When providing documents to FOIA requesters in which information is withheld, Army activities must follow these procedures:

(1) Although portions of some records may be denied, the remaining reasonably segregable nonexempt portions must be released to the FOIA requester. Army activities are encouraged to use onscreen electronic redaction capabilities when redacting documents. If an activity does not have this capability, it must not use black magic markers for document redaction because their use does not adequately block the exempt information. Acceptable manual methods of redaction include black or white tape that completely blocks out the information below it or manually cutting the exempt information out of a copy of the responsive document. The last step when using a manual redaction method is making a photocopy of the final product to verify that all exempt information is redacted.

(2) The amount of redacted information must be indicated on the released portion of paper records, or electronic copies of paper records, by use of brackets or darkened areas. In no case will the redacted areas be left “white” without the use of brackets to show the bounds of the redaction. In the case of redaction in audiovisual or microfiche records,

the amount of redacted information will be indicated at the place in the record where redaction was made if it is technically feasible to do so.

(3) When an Army activity withholds information within a partially releasable document, the activity must indicate on the document the exemption pursuant to which it withheld the information. This marking of the exemption will be located within the redacted portion or next to it.

f. For additional information about exemptions, see 32 CFR, Subpart F; for detailed descriptions of FOIA exemptions, see 32 CFR 286, Subpart C.

Chapter 5

Freedom of Information Act Processing Procedures, Appeals, and Judicial Actions

5–1. Required coordination

a. Before forwarding responsive documents to an IDA for action, an Army activity will obtain a legal opinion from its servicing legal office concerning the releasability of the requested records.

b. A copy of that legal review, the original FOIA request, two copies of the requested information (with one copy clearly indicating which portions are recommended for withholding, which FOIA exemptions support such withholding, and which portions, if any, have already been released), a copy of the interim response acknowledging receipt and notifying the requester of the referral to the IDA, and a cover letter containing a telephone point of contact will be forwarded to the IDA with the command's recommendation to deny the request in whole or in part.

c. Army FOIA Offices receiving a FOIA request for records, the release of which may be considered of interest to DoD will follow the DoD significant FOIA request process. Request determined to be of interest to Army leadership or OCLL will follow the Army Notification process memorandum.

d. In any FOIA request where the responsive records include email communications sent to or from Army attorneys and their clients, the legal office the attorney was assigned to at the time the email(s) was sent and/or received is responsible for providing proposed redactions throughout the email string for all responsive emails. All Army legal offices must fully cooperate with IDAs in this regard by providing proposed redactions indicating the applicable FOIA exemption. Nothing in this paragraph will be construed to require attorneys who represent individual clients, such as trial defense counsel or legal assistance attorneys, to disclose information in a manner that violates applicable rules of professional responsibility. Attorneys who represent individual clients will coordinate with the relevant IDA to ensure a FOIA release of privileged or confidential information is accomplished in a manner consistent with both the FOIA and applicable rules of professional responsibility.

5–2. Operations security

a. Release of information under FOIA has the potential to adversely affect OPSEC. The Army implementing guidance for OPSEC is AR 530–1. Command OPSEC and/or FOIA advisors should implement the policies and procedures in AR 530–1, consistent with this regulation and the following considerations:

(1) Documents or parts of documents properly classified in the interest of national security must be protected. Classified documents may be released in response to a FOIA request only under AR 380–5. AR 380–5 provides that if parts of a document are not classified and can be segregated with reasonable ease, they may be released; parts requiring continued protection must be clearly identified and withheld.

(2) The release of unclassified and/or CUI documents could violate national security interests. When this appears possible, OPSEC and/or FOIA advisors should request a classification evaluation of the document by its Original Classification Authority (OCA) under AR 380–5. In such cases, additional FOIA exemptions may also apply (see chap 4).

(3) A combination of unclassified documents, or parts of them, could combine to supply information that might violate national security if released. When this appears possible, OPSEC and/or FOIA advisors should consider requesting a classification evaluation of the combined information in accordance with AR 380–5.

(4) A document or information may not be properly or currently classified when a FOIA request for it is received. In this case, the request may not be denied on the grounds that the document or information is classified except in accordance with EO 13526, as amended, and AR 380–5.

b. OPSEC and/or FOIA advisors will—

(1) Advise personnel processing FOIA requests on related OPSEC requirements.

(2) Help custodians of requested documents prepare requests for classification evaluations.

(3) Coordinate with the appropriate original classification authority and when required, assist custodians of requested documents as they identify the parts of documents that must remain classified under this paragraph and AR 380–5.

c. OPSEC and/or FOIA advisors do not, by their actions, relieve FOIA personnel and custodians processing FOIA requests of their responsibility to protect classified or exempted information.

5-3. Requests from private parties

Requests from members of the public must be in writing, and should clearly list all other addressees within the Federal Government to which the request was also sent. This procedure will reduce processing time requirements and ensure better inter-agency and intra-agency coordination. Army activities will still process requests in which the requester does not list all the other addresses, however. Disclosure of records to individuals under FOIA is considered public release of information except as provided in this regulation. DA officials will release the following records, upon request, to the persons specified in the following paragraphs, even though these records are exempt from release to the general public. The statutory 20 working day limit applies.

a. *Medical records.* As specified in AR 40-66 and DODM 6025.18, commanders or chiefs of medical treatment facilities will release information to persons identified by the patient as being involved with their care, or others, as follows:

- (1) On the condition of sick or injured patients-- to the patient's relatives.
- (2) That a patient's condition has become critical-- to the nearest known relative or to the person the patient has named to be informed in an emergency.
- (3) That a diagnosis of psychosis has been made-- to the nearest known relative or to the person named by the patient if the patient is incapacitated and the medical treatment facility determines that disclosure is in the patient's best interest.
- (4) On births, deaths, and cases of communicable diseases-- to local officials (if required by local laws).
- (5) Copies of records of present or former Soldiers, dependents, civilian employees, or patients in DA medical facilities will be released to the patient or patient's representative upon written request. The attending physician can withhold records if they think that release may injure the patient's mental or physical health. In that case, copies of records will be released to the patient's next of kin or legal representative, or to the doctor assuming the patient's treatment. If the patient is incapacitated or dies, the copies will be released, after receiving a written request, to the patient's next of kin or legal representative.
- (6) Copies of records may be given to a Federal or State hospital or penal institution if the person concerned is an inmate or patient.
- (7) Copies of Army records or information may be given to authorized representatives of certain agencies by commanders. The National Academy of Sciences, the National Research Council, and other accredited agencies are eligible to receive such information (for example, medical research data) when they are engaged in cooperative studies, with the approval of The Surgeon General of the Army. However, certain information on drug and alcohol use cannot be released. AR 600-85 covers the Army's alcohol and drug abuse prevention and control program.
- (8) Copies of pertinent parts of a patient's records can be provided to the staff judge advocate or legal officer of the command in connection with the Government's collection of a claim. If proper, the legal officer can release this information to the defendant's insurer without the patient's consent.
- (9) *Third parties.* Information released to third parties must be accompanied by a statement of the conditions of release. The statement will specify that the information will not be disclosed to other persons except as privileged communication between doctor and patient.

b. *Military personnel records.* Military personnel records will be released under these conditions:

- (1) DA must provide responsive information about a person's military service in response to a request by that person or based on that person's written consent given to a legal representative.
- (2) Papers relating to applications for, designation of beneficiaries, and allotments to pay premiums for National Service Life Insurance or Service members' Group Life Insurance will be released to the applicant or insured. If the insured is adjudged incapacitated (evidence of a judgment must be included with the request) or dies, the records will be released, on request, to designated beneficiaries or the next of kin.
- (3) Copies of DA documents that record the death of a Soldier, dependent, or civilian employee will be released, on request, to that person's next of kin, life insurance carrier, and legal representative. A person acting on behalf of the decedent's estate (for example, the executor of a will) may also obtain copies by submitting a written request that includes evidence of their representative capacity. That representative may give written consent for release to others.
- (4) Papers relating to the pay and allowances or allotments of a present or former Soldier will be released to the Soldier or his or her authorized representative. If the Soldier is deceased, these papers will be released to the next of kin or legal representative of the decedent's estate.

c. *Civilian personnel records.* Civilian personnel officers with custody of papers relating to the pay and allowances or allotments of current or former civilian employees will release them to the employee or his or her authorized

representative. If the employee is deceased, these records will be released to the next of kin or legal representative of the decedent's estate. However, a civilian personnel officer cannot release statements of witnesses, medical records, or other reports or documents pertaining to compensation for injuries or the death of a DA civilian employee.

d. Release of information to the public concerning accused persons before determination of the case. Such release may prejudice the opportunity for the accused to have a fair and impartial determination of the case. The following procedures apply:

(1) *Information that can be released.* The convening authority may release the following information concerning persons accused of an offense to public news agencies or media.

(a) The name, grade, or rank, unit, regular assigned duties, and other information about the accused as allowed by AR 25–22.

(b) The substance or text of the offense of which the person is accused of.

(c) The identity of the apprehending or investigating agency and the length or scope of the investigation before apprehension.

(d) The factual circumstances immediately surrounding the apprehension, including the time and place of apprehension, resistance, or pursuit.

(e) The type and place of custody, if any.

(2) *Information that will not be released.* Before evidence has been presented in open court, subjective observations or any information not incontrovertibly factual will not be released. Background information or information relating to the circumstances of an apprehension may be prejudicial to the best interests of the accused, and will be released on a case-by-case basis with TJAG approval, unless it serves a law enforcement function. The following kinds of information will not be released:

(a) Observations or comments on the character and demeanor of the accused, including those at the time of apprehension and arrest or during pretrial custody.

(b) Statements, admissions, confessions, or alibis attributable to an accused, or the fact of refusal or failure of the accused to make a statement.

(c) Reference to confidential sources, investigative techniques and procedures, investigator notes, and activity files. This includes reference to fingerprint tests, polygraph examinations, blood tests, firearms identification tests, or similar laboratory tests or examinations.

(d) Statements as to the identity, credibility, or testimony of prospective witnesses.

(e) Statements concerning evidence or argument in the case, whether or not that evidence or argument may be used at the trial.

(f) Any opinion on the accused's guilt.

(g) Any opinion on the possibility of a plea of guilty to the offense charged, or of a plea to a lesser offense.

(3) *Other considerations.*

(a) *Photographing or televising the accused.* DA personnel should not encourage or volunteer assistance to news media in photographing or televising an accused or suspected person being held or transported in military custody. DA representatives should not make photographs of an accused or suspect available unless a law enforcement function is served. Requests from news media to take photographs during courts-martial are governed by AR 360–1.

(b) *Fugitives from justice.* Paragraph 5–3d(3)(a) does not restrict the release of information to enlist public aid in apprehending a fugitive from justice.

(c) Permission to release information from military personnel records to public news agencies will be processed according to this regulation, AR 25–22, and AR 360–1.

e. Release of lists of names and duty addresses. Lists of names, including telephone directories, organizational charts, staff directories published by installations or activities, and other personally identifying information will ordinarily be withheld when requested under FOIA. This restriction does not prevent a selective release of names and duty information of personnel who, by the nature of their position and duties, frequently interact with the public, such as general officers, public affairs officers (PAOs), and other personnel designated as official command spokespersons. The IDA for telephone directories is delegated to the Senior Counsel, OAASA. Public affairs officials may, after careful analysis, release information determined to have legitimate news value, such as notices of personnel reassignments to new units or installations within the continental United States, results of selection or promotion boards, school graduations and completions, and awards and similar personal achievements. They may release the names and duty addresses of key officials if such release is determined to be in the interests of advancing official community relations functions.

f. Litigation, tort claims, and contract disputes. Information or records released under this paragraph are subject to the time limitations prescribed by the FOIA. The requester must be advised of the reasons for denial or referral.

(1) *Litigation.*

(a) Each request for a record related to pending litigation involving the United States will be referred to the staff judge advocate or legal officer of the command. He or she will promptly inform the Litigation Division, Office of the Judge Advocate General of the substance of the request and the content of the record requested. Mailing address: US Army Legal Services Agency, General, Litigation Division, 9275 Gunston Road, Fort Belvoir, VA 22060.

(b) If information is released for use in litigation involving the United States, the official responsible for investigative reports (in accordance with AR 27–40) must be advised of the release. The official will note the release in such investigative reports.

(c) Information or records normally exempted from release (that is, personnel and medical records) may be releasable to the judge or court concerned, for use in litigation to which the United States is not a party. Refer such requests to the local staff judge advocate or legal officer, who will coordinate them with the Litigation Division, OTJAG.

(2) *Tort claims.*

(a) A claimant or claimant’s attorney may request a record that relates to a pending administrative tort claim filed against DA. Promptly refer such requests to the claims approval or settlement authority that has monetary jurisdiction over the pending claim. These authorities will follow AR 27–20. The request may concern an incident in which the pending claim is not as large as a potential claim; in such a case, refer the request to the authority that has monetary jurisdiction over the potential claim.

(b) A potential claimant or the attorney may request information under circumstances clearly indicating that it will be used to file a tort claim, although none has yet been filed. Refer such requests to the staff judge advocate or legal officer of the command. That authority, when subordinate, will promptly inform the Chief, U.S. Army Claims Service of the substance of the request and content of the record. (Mailing address: U.S. Army Claims Service (JACS–ZXA), Building 4411, Llewellyn Avenue, Fort Meade, MD 20755–5360).

(c) IDA officials listed in Appendix B who receive requests under paragraph 5–3f(2)(a) or (b) will refer them directly to the Chief, Army Claims Service. They will also advise the requesters of the referral and basis for it.

(d) The Chief, Army Claims Service, will process requests according to this regulation and AR 27–20.

(3) *Contract disputes.* Each request for a record that relates to a potential contract dispute or a dispute that has not reached final decision by the contracting officer will be treated as a request for procurement records and not as litigation. However, the officials will consider the effect of release on the potential dispute. Those officials may consult with the U.S. Army Legal Services Agency (Contract and Fiscal Law Division), 9275 Gunston Road, Fort Belvoir, VA 22060–5546. If the request is for a record that relates to a pending contract appeal to the Armed Services Board of Contract Appeals or to a final decision that is still subject to appeal (that is, 90 days have not lapsed after receipt of the final decision by the contractor), then the request will be—

(a) Treated as involving a contract dispute.

(b) Referred to the Army Legal Services Agency (Contract and Fiscal Law Division).

5–4. Requests from government officials

a. Requests for Army records from officials of State and local governments are to be treated like any other FOIA request.

b. Requests for Army records from Members of Congress who are not seeking records on behalf of a congressional committee, subcommittee, the House of Representatives or the Senate sitting as a whole, or on behalf of their constituents will be considered the same as any other requester.

c. Requests for Army records from officials of foreign governments will be considered the same as any other requester. However, Army intelligence elements are statutorily prohibited from releasing records responsive to requests made by any foreign government or a representative of a foreign government.

d. Requests from officials of foreign governments that do not invoke FOIA will be referred to appropriate foreign disclosure channels and the requester will be so notified.

5–5. Privileged release (outside of the Freedom of Information Act) to U.S. Government officials

a. Records exempt from release to the public under FOIA may be disclosed in accordance with Army regulations to agencies of the Federal Government, whether legislative, executive, or administrative, as follows:

(1) *Releases to Congress Generally.*

(a) Requests submitted by members of Congress on behalf of a congressional committee or subcommittee, or on behalf of the House of Representatives or the Senate sitting as a whole, that are received by an Army FOIA activity will be referred to the appropriate offices that handles legislative inquiries and processed in accordance with AR 1–20. Such requests are not processed pursuant to the FOIA and withholding exemptions may not apply.

(b) Requests from members of Congress who are not seeking records on behalf of a congressional committee or subcommittee, or on behalf of the House of Representatives or the Senate sitting as a whole, will be processed under

AR 1–20 and not through FOIA channels. However, any release of information will be consistent with a release to an individual pursuant to the FOIA and its withholding exemptions. In these cases, the member will not be provided with appeal rights.

(c) If a member of Congress chooses to request records pursuant to the FOIA, then the request will be processed in accordance with this regulation.

(2) *Releases of Specific Types of Information to Congress.*

(a) *National security classified records.* Follow AR 380–5.

(b) *Civilian personnel records.* Members of congressional committees, subcommittees, or joint committees may examine official personnel folders to the extent that the subject matter falls within their established jurisdictions, as permitted by 5 CFR 297.401(i);

(c) *Information related to disciplinary action.* This paragraph refers to records of trial by courts-martial; non-judicial punishment of military personnel under the Uniform Code of Military Justice, Article 15 (UCMJ, Art. 15); non-punitive measures such as administrative reprimands and admonitions; suspensions of civilian employees; and similar documents. If DA has specific instructions on the request, the following instructions will apply. Subordinate commanders will not release any information without securing the consent of the proper installation commander. The installation commander may release the information unless the request is for a classified or FOUO/CUI document. In that case the commander will refer the request promptly to the Chief of Legislative Liaison for a action, including the recommendations of the transmitting agency and copies of the requested records with the referral.

(d) *Military personnel records.* Only HQDA can release information from these records. Custodians will refer all requests from Congress directly and promptly to the Chief of Legislative Liaison, 1600 Army Pentagon, Washington DC 20310–1600.

(e) *Criminal investigation records.* Only the Commanding General, U.S. Army Criminal Investigation Command, can release any command originated criminal investigation file. For more information, see AR 195–2.

(f) *Other exempt records.* The commanders or chiefs will refer requests for all other categories of exempt information directly to the Chief of Legislative Liaison. They will include a copy of the material requested and, as appropriate, recommendations concerning release or denial.

(3) To the Federal courts, whenever ordered by officers of the court as necessary for the proper administration of justice.

(4) To other Federal agencies, both executive and administrative, as determined by the head of a DOD Component or designee.

(a) *Disciplinary actions and criminal investigations.* Requests for access to records of disciplinary actions or criminal investigations will be honored if proper credentials are presented. Representatives of the U.S. Office of Personnel Management may be given information from personnel files of employees actually employed at organizations or activities. Each request will be considered on its merits. The information released will be the minimum required in connection with the investigation being conducted.

(b) *Other types of requests.* All other official requests DA elements receive from agencies of the executive branch (including other military departments) will be honored, barring compelling reasons to the contrary. If reasons exist for withholding records, requests will be submitted for determination of the propriety of release to the appropriate Army command, Army service component command, or direct reporting unit.

b. Army activities will inform officials receiving records under the provisions of this section that those records are exempt from public release under FOIA. Army activities also will advise officials of any special handling instructions. Classified information is subject to the provisions of DODM 5200.01, Volume 1 and information contained in PA systems of records is subject to DOD 5400.11–R.

5–6. Consultations

a. When an Army activity receives a FOIA request for a record and an Army organization (including a combatant command) has an interest in the subject matter, consultation with that affected Army or DOD organization is required. For example, when an Army activity receives a request for Army records they hold that is related to an Army operation in a foreign country, the cognizant combatant command (for example, Army Central command) for the area involved in the request will be consulted before a release is made. Consultations may be telephonic, electronic, or in hard copy.

b. Nothing described in chapter 6 CFR 286, Subpart F, regarding fees will impede the processing of a FOIA request initially received by an Army activity.

5-7. Initial denial authorities

a. The DA officials listed in appendix B are designated as Army IDAs. Only an IDA, a delegate, or the Secretary of the Army can deny FOIA requests for DA records. Army activities will limit the number of IDA delegated officials appointed. In designating IDA delegated officials, an Army activity will balance the goals of centralization of authority to promote uniform decisions and decentralization to facilitate responding to each request within the time limitations of the FOIA. Each IDA will act on direct and referred requests for records within an area of functional responsibility (subject matter). Included are records created or kept within the IDA's area of responsibility; records retired by, or referred to, the IDA's headquarters or office; and records of predecessor organizations. If a request involves the areas of more than one IDA, the IDA the request was originally addressed to will normally respond to it. However, the affected IDAs may consult on such requests and negotiate responsibility for different parts of a request. This includes classified records retired to the National Archives and Records Administration when a mandatory declassification review is necessary. IDAs will complete all required coordination at the initial denial level.

b. The initial determination of whether to make a record available or grant a fee waiver upon request may be made by any suitable official designated by the Command. The presence of the marking "For Official Use Only" does not relieve the designated official of the responsibility to review the requested record for the purpose of determining whether an exemption is applicable and should be invoked. IDAs may delegate all or part of their authority to an office chief or subordinate commander. Such delegations must not slow FOIA actions. If an IDA's delegate denies a FOIA or fee waiver request, the delegate must clearly state that he or she is acting for the IDA and identify the IDA by name and position in the written response to the requester. IDAs will send the names, offices, email addresses, and telephone numbers of their delegates to the U.S. Army Freedom of Information Office, Records Management and Declassification Agency, 9301 Chapek Road, Building 1458, Fort Belvoir, VA 22060-5605. IDAs will keep this information current.

c. The officials designated by Army activities to make initial determinations should consult with PAOs to become familiar with subject-matters that are considered to be newsworthy and advise PAOs of all requests from news media representatives. FOIA requests from members of the media will be processed and information released in accordance with the FOIA, its withholding exemptions and AR 25-55. In addition, the officials should inform PAOs in advance when they intend to withhold or partially withhold a record for IDA release determination, if it appears that the withholding action may be challenged in the media. A FOIA release or denial action, appeal, or court review may generate public or press interest. In such case, the IDA (or delegate) should consult the Office of the Chief of Public Affairs or the command or organization PAO. The IDA should inform the servicing PAO of the issue and obtain advice and recommendations on the public affairs aspect of the request and response. Coordination must be completed within the statutory FOIA response limit of 20 working days. The point of contact for the Office of the Chief of Public Affairs is U.S. Army Public Affairs, Office of the Chief of Public Affairs, 1500 Army Pentagon, Washington, DC 20310-1500; or usarmy.pentagon.hqda_ocpa.mbx.foia@mail.mil. If the request involves actual or potential litigation against the United States, the release must be coordinated with OTJAG, Litigation Division.

d. Before forwarding a FOIA request to an IDA for action, FOIA personnel will obtain an opinion from their servicing judge advocate concerning the releasability of the requested records. The following documents will be provided to the IDA:

- (1) A copy of that legal review;
- (2) The original FOIA request;
- (3) Two copies of the requested information (with one copy clearly indicating which portions are recommended for withholding, which FOIA exemptions support such withholding, and which portions, if any, have already been released);
- (4) A copy of the interim response acknowledging receipt and notifying the requester of the referral to the IDA;
- (5) A cover letter that briefly documents the actions taken by the FOIA office prior to IDA submission and contains a telephone point of contact will be forwarded to the IDA with the command's recommendation to deny a request in whole or in part. Within the FACTS, the IDA can indicate one of four actions: A-1: Denied in Part; A-2: Denied in Full; A-3: Granted; A-4: Administratively Closed. For additional information about FOIA request processing, contact the U.S. Army FOIA Office. For a list of designated IDAs and areas of responsibility, see appendix B.
- (6) IDAs are authorized to act for its own (and its subordinate units) emails and local unit records not clearly falling under another subject matter IDA.

5-8. Reasons for not releasing a record

Reason for not complying with a request for a record as required by 5 USC 552(a)(3):

a. No records. A reasonable search of files failed to identify responsive records. The records custodian will prepare a detailed "no records" certificate or affidavit. This document must include, at a minimum, what areas or offices were

searched, and how the search was conducted (manually, by computer, searched terms used, and so on). The records custodian will sign the “no records” certification and include his or her grade and title. The original document will be forwarded to the IDA with the FOIA request and any initial response sent to the requester.

b. Referral. The request is transferred to another Army activity, DOD Component, or Federal agency.

c. Request withdrawn. The requester withdraws the request.

d. Fee-related reason. The requester is unwilling to pay the 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.

e. Records not reasonably described. A record has not been described with sufficient particularity to enable the Army activity or DOD component to locate it by conducting a reasonable search.

f. Not a proper freedom of information act request for some other reason. The requester unreasonably failed to comply with procedural requirements, other than fee-related requirements, imposed by this regulation or the Army activity’s supplementing regulations.

g. Not an agency record. The information requested is not a record within the meaning of the FOIA and this regulation.

h. Duplicate request. The request is a duplicate request (that is, a requester asks for the same information more than once). This includes identical requests received via different means (email, facsimile, mail, and courier) at the same or different times.

i. Partial or total denial. The record is denied in whole or in part in accordance with the exemptions set forth in the FOIA.

j. Other (specify). Any other reason a request does not comply with published rules, other than those outlined in this paragraph.

5–9. Reasonably segregable portions

a. Although portions of some records may be denied, the remaining reasonably segregable portions may be released to the requester when the FOIA analyst can assume that a skillful and knowledgeable person could not reconstruct the redacted information. If indicating the extent of the deletion would harm an interest protected by an exemption, the amount of redacted information will be indicated on the released portion of paper records by the use of brackets or darkened areas indicating removal of information. No redacted areas will be left “white” without the use of brackets to show the boundary of redacted information.

b. In the case of electronic redaction, or redactions in audiovisual or microfiche records, if technically feasible, the amount of redacted information will be indicated at the place in the record the redaction was made, unless including the indication would harm an interest protected by the exemption under which the redaction is made. This redaction may be done by the use of brackets, shaded areas, or some other identifiable technique that will clearly show the limits of the redacted information.

c. When a record is denied in full, the response advising the requester of that determination will specifically state that it is not possible to reasonably segregate portions of the record for release.

5–10. Processing requests

a. General. In general and to the extent practicable, Army activities will communicate with requesters having access to the Internet using electronic means, such as email or web portal.

(1) Acknowledgments of requests. Army activities will acknowledge requests in writing and assign individualized tracking numbers. Activities will include these tracking numbers and any tracking numbers used by FOIA requesters in all correspondence.

(2) Estimated dates of completion and interim responses. Upon request, Army activities will provide an estimated date by which the activity expects to provide a response to the requester. If a request involves a voluminous amount of material or searches in multiple locations, the Army activity may provide interim responses, releasing the records on a rolling basis.

(3) Grants of requests. Once an Army activity makes a determination to grant a request in whole or in part, it will notify the requester in writing. The Army activity will also inform the requester:

(a) Of any fees charged, waived, or not received in accordance with this regulation and 32 CFR 286; and

(b) That they may contact the Army FOIA Public Liaison or Office of Government Information Services for further assistance or to discuss any aspect of their request.

b. Determinations. Whenever possible, determinations to release or deny a record will be made and the decision reported to the requester within 20 working days of receipt of a proper request by the official designated to respond. When an Army activity has a significant number of pending requests which prevent a response determination within the 20 working day period, the requester will be sent an interim response advising whether the request qualifies for

the fast or slow track within the Army activity's multitrack processing system. For a request that a written notice has extended the time limits by 10 additional working days, see paragraph 5-12.

(1) When a decision is made to release a record, a copy should promptly be made available to the requester once he or she has complied with procedural requirements. The Army activity will make reasonable efforts to:

(a) Provide the record in any form or format requested if the record is readily reproducible in that form or format in the component's automated system.

(b) Provide records in a form that is reasonably usable.

(c) Maintain records in forms and formats that are reproducible.

(d) Use available office equipment to digitally reproduce hard copy records onto digital media.

(2) The Army activity has not met the readily reproducible criterion if it must outsource or expend significant resources to reproduce a record into the requested format. In responding to FOIA requests for records, the activity will make reasonable efforts to search for records in electronic form or format if maintained in automated systems, except when such efforts would significantly interfere with the operation of the automated systems. The Army activity will make such determinations on a case-by-case basis.

(3) When a request for a record is denied in whole or in part, the official designated to respond will inform the requester in writing of the name and title or position of the official who made the determination, and will explain the basis for the determination in enough detail to permit the requester to make a decision concerning appeal. The requester will be informed of the exemptions the denial is based on, including a brief statement describing what the exemption(s) cover. When the initial denial is based in whole or in part on a security classification, the explanation should include a summary of the applicable Executive order criteria for classification, as well as an explanation, to the extent reasonably feasible, of how those criteria apply to the particular record in question. The requester will also be advised of the procedures for appealing an unfavorable determination to the appropriate appellate authority for that Army activity. The IDA will inform the requester of the right to appeal the IDA's decision within 90 days and of the procedures to submit an appeal to the IDA.

(4) The final response to the requester should contain information concerning the fee status of the request, when applicable, consistent with the provisions of 32 CFR 286. When a requester is assessed fees for processing a request, the requester's fee category will be specified in the response letter. Activities also will provide the requester with a complete cost breakdown (for example, 115 pages of office reproduction at 15 cents a page, 5 minutes of computer search time at \$43.50 a minute, 3 hours of professional level search at \$48.00 per hour) in the response letter.

(5) The explanation of the substantive basis for a denial will include specific citation of the statutory exemption applied under provisions of this part; (for example, 5 USC 552 (b)(1)). Merely referring to a classification, to an "FOUO" marking on the requested record, or to an Army regulation does not constitute a proper citation or explanation of the basis for invoking an exemption.

(6) When the time for response becomes an issue, the official responsible for replying will acknowledge to the requester the date of receipt of the request.

(7) When denying a request for records, in whole or in part, an Army activity will make a reasonable effort to estimate the volume of the records denied and give the estimate to the requester, unless providing such an estimate would harm an interest protected by a FOIA exemption. This estimate should be in number of pages or some other reasonable form of estimation, unless the volume is otherwise indicated through deletions on records disclosed in part.

(8) When denying a request for records in accordance with a statute qualifying as a FOIA exemption 3 statute, Army activities will state the particular statute it relied on to deny the information.

c. Denials (adverse determinations). An Army activity will notify the requester in writing when records are exempt, in whole or part; the request does not reasonably describe the records sought; the information requested is not a record subject to the FOIA; the requested record does not exist, cannot be located, or has been destroyed; or the requested record is not readily reproducible in the form or format the requester seeks. Adverse determinations also include denials involving fees, fee waiver matters, or denials of requests for expedited processing.

d. Content of denial. The denial will include:

(1) The name and title or position of the IDA;

(2) A brief statement of the reasons for the denial, including any FOIA exemption the Army activity applied in denying the request;

(3) For any information denied under Exemption 1, the applicable section or sections of the appropriate Executive order on classification that establishing continued classification of the information;

(4) For any information denied under Exemption 3, the specific statute relied on to deny the information along with a short description of the statute.

(5) A statement that the requester must appeal no later than 90 days after the date of the denial and instructions on how to appeal to the Army activity's appellate authority. The instructions will include the appellate authority's duty title, the mailing address for the appeal, and instructions on how the requester can appeal electronically; and

(6) A statement advising the requester of the right to seek dispute resolution services from the Army FOIA Public Liaison or the Office of Government Information Services.

e. Markings on released documents. Records disclosed in part will be marked clearly to show the amount of information deleted and the exemption under which the deletion was made unless doing so would harm an interest protected by an applicable exemption. The location of the information deleted also will be indicated on the record, if technically feasible.

f. Use of record exclusions.

(1) In the event an Army activity identifies records that may be subject to exclusion from the requirements of FOIA pursuant to 5 USC 552(c), the Army activity must confer with the Directorate for Oversight and Compliance (known as the DoD FOIA Policy Office), which will confer with the Department of Justice, Office of Information Policy, to obtain approval to apply the exclusion.

(2) An Army activity invoking an exclusion will maintain an administrative record of the process of invocation and approval of the exclusion by Office of Information Policy.

g. Consultation. Final denial by an IDA involving issues not previously resolved, or that the Army activity knows to be inconsistent with rulings of other DOD components, should not be made without consulting the IDA's servicing legal office and/or the Army FOIA Office.

5-11. Aggregating Freedom of Information Act requests

a. Army activities may aggregate requests by the same requester, or by a group of requesters acting in concert, if they believe such requests actually constitute a single request, and the requests involve clearly related matters. If requests are aggregated under these conditions, the requester or requesters will be so notified.

b. When an Army activity reasonably believes that a FOIA requester, or group of requesters acting in concert, is trying to break a FOIA request down into a series of requests to avoid the assessment of fees, the activity may aggregate any such FOIA requests and charge accordingly. For example, if a FOIA requester considered "other" for fee purposes files multiple FOIA requests at the same time, with each request seeking portions of a document or documents, solely to avoid payment of fees, the activity may aggregate the requests.

(1) In determining whether this belief would be reasonable, activities should consider the time period over which the FOIA requests are submitted. It is reasonable to presume that multiple FOIA requests of this type made within a 30-day period were made to avoid fees. For FOIA requests made over a longer period, however, such a presumption becomes harder to sustain and Army activities must have a solid basis for determining that aggregation is warranted in such cases.

(2) Before aggregating FOIA requests from more than one requester, Army activities must have a basis to conclude that the requesters are acting both in concert and specifically to avoid the payment of fees.

(3) Army activities will not aggregate multiple FOIA requests on unrelated subjects from one FOIA requester.

c. If a requester files multiple requests at the same time, each seeking portions of a document or documents, solely to avoid the payment of fees, Army activities may aggregate those requests.

5-12. Extension of time

In unusual circumstances, when additional time is needed to respond to a FOIA request, an Army activity will acknowledge a request in writing within 20 working days; describe the circumstances requiring the delay; and indicate the anticipated date, not to exceed 10 additional working days, for a substantive response.

a. When a written notice has extended the response time limits by 10 additional working days, and the activity determines that it cannot make a response determination within that additional 10 working day period, the activity will notify the requester and give them an opportunity to either limit the scope of the request so that it can be processed within the extended time limit, or to arrange an alternative time frame for processing the request or a modified request. A court will consider a requester's refusal to reasonably modify a request, or to arrange for an alternative time frame, when determining whether exceptional circumstances exist with respect to the Army activity's backlog of requests.

b. Unusual circumstances that may justify delay are the need to: (i) search for and collect the requested records from other facilities that are separate from the office determined responsible for a release or denial decision on the requested information; (ii) search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are requested in a single request; and (iii) consultation, which will be conducted with all practicable speed, with other agencies having a substantial interest in the determination of the request, or among two or more Army activities or DOD components having a substantial subject-matter interest in the request.

c. In cases where the statutory time limits cannot be met and no extension of time has been agreed to, the inability to process any part of the request within the specified time should be explained and agreed to in writing by the requester. It should be made clear that any such agreement does not prejudice the right of the requester to appeal the initial decision after it is made. Army activities are reminded that the requester still retains the right to treat this delay as a de facto denial with full administrative remedies. The cognizant FOIA office is responsible for coordinating an extension of time with the requester.

5-13. Misdirected requests

a. Misdirected requests will be forwarded promptly to the Army activity or other Federal agency with the responsibility for the records requested. The period allowed for responding to the misdirected request will begin when one of the following occurs:

- (1) When received by the Army activity holding the requested records; or
- (2) Not later than ten days after receipt by any Army activity authorized by this regulation to receive FOIA requests.

b. For additional information, see 32 CFR, Subpart 286.6. If a request is merely misaddressed, and the receiving Army activity or DOD component simply advises the requester of the error and refers the request to the appropriate Army activity or DOD component, it will not be considered a no record determination.

5-14. Records of Non-U.S. Government source

a. *Designation of confidential commercial information.*

(1) Pursuant to Executive Order 12600 of June 23, 1987, 52 Federal Register 23781, *Predisclosure Notification Procedures for Confidential Commercial Information*, the Army activity will promptly notify the submitter of commercial trade secrets, financial information, or privileged or confidential data whenever such information is requested under FOIA. The FOIA requester must also be notified that the submitter of the information is entitled to such a notice and will be provided an opportunity to object to the release of the requested information. Submitter means any person or entity who provides confidential commercial information to the government. The term "submitter" includes, but is not limited to, corporations, state governments, and foreign governments.

(2) Submitters of confidential commercial information should be provided the opportunity to use good faith efforts to designate by appropriate markings, at the time of submission, any portion of data it considers to be protected under FOIA Exemption 4 and how long such designation should exist. These designations will expire 10 years after the date of the submission, unless the submitter requests and provides justification for a longer designation period.

(3) The final release or withholding decision on the documents requested remains with the FOIA IDA after consideration of the justification provided by the submitter and any impairment to the agency's procurement process that may occur if the information were to be released.

(4) In cases involving a voluminous number of submitters, the Army activity may post or publish a notice in a place or manner reasonably likely to inform the submitters of the proposed disclosure instead of sending individual notifications.

(5) Notice to submitters should include an official letter with specific directions and the suspense date for responding. Specifics required in the letter include:

- (a) The name of the requester.
- (b) A description of the requested information.
- (c) A copy of the requested information.
- (d) Reasonable amount of time (30 days) for the submitter to respond to the notice.
- (e) An explanation informing the submitter that they must provide a written, detailed description of the specific information and exactly how disclosure of the requested information would cause substantial harm to their present or future competitive position within the marketplace. The submitter must provide examples of how their competitors will use the information to place their organization in such a position.

b. *Submitter notice and contract proposals.* If the submitted information is a proposal in response to a solicitation for a competitive proposal, and the proposal is in the possession and control of DA (see 10 USC 2305(g)), the proposal will not be disclosed, and no submitter notification and subsequent analysis is required. The proposal will be withheld from public disclosure pursuant to 10 USC 2305(g) and FOIA exemption (b)(3). This statute does not apply to bids, unsolicited proposals, any proposal for a future phase of an ongoing activity, or disclosure to the offeror who submitted the proposal. In such situations, normal submitter notice will be conducted except for sealed bids that are opened and read to the public. A proposal includes information contained in or originating from any proposal, including a technical, management, or cost proposal submitted by an offeror in response to solicitation for a competitive proposal. It does not include an offeror's name or total price or unit prices when set forth in a record other than the proposal itself.

Both submitter notice and analysis in accordance with this section are required for exemption (b)(4) matters that are not specifically incorporated in 10 USC 2305(g).

c. A submitter who fails to respond to the notice within the time specified will be considered to have no objections to the disclosure of the requested information. The Army activity is under no requirement to notify the submitter or consider any objections received after the suspense has passed.

d. When a submitter responds to the Army activity within the time specified, the Army activity will consider the objections posed when drafting its final decision of release. Any information the submitter provides may be subject to future FOIA requests. The Army activity will endeavor to protect the submitter's proprietary data to the extent permitted by law.

e. When the Army activity decides to disclose information over the objection of the submitter, the activity is then required to notify the submitter within a reasonable amount of time (14 calendar days) before disclosure. The submitter should have ample opportunity to take whatever legal action it chooses to keep the records from disclosure. This Intent to Disclose Notice will include the following:

(1) The Army activity's reason why the submitter's objections did not warrant withholding of the information under FOIA Exemption 4.

(2) A copy of the information in the same format that the Army activity intends to disclose.

f. When a notice is not required.

(1) When the FOIA office determines that the documents are exempt from disclosure under FOIA and therefore, will not be disclosed.

(2) When the submitter of the information has provided justification that warrants withholding under Exemption 4.

(3) When the information has been lawfully published or officially made available previously to the public.

(4) The disclosure of the information is required by law other than the FOIA, by regulation, or in accordance with EO 12600.

g. *Freedom of Information Act litigation.*

(1) If an Army activity decides to withhold confidential commercial information, FOIA requesters, after exhausting their administrative rights through an appeal, may file suit in federal court for the disclosure of such information.

(2) If the requester files a lawsuit, the Army activity must promptly notify the submitter of the pending litigation.

h. *Requester notification.* Notification must be submitted to the FOIA requester when the following occurs:

(1) Any time an Army activity contacts the submitter of the information requested with the opportunity to provide justification to withhold disclosure.

(2) When the Army activity notifies the submitter of the information of its intent to release the requested information over the submitter's objections.

(3) Whenever the Army activity is notified that a submitter filed or intends to file a reverse FOIA lawsuit to prevent the disclosure of the requested information.

5-15. Appeals

a. *General.* Requester may administratively appeal adverse determinations, which include the following:

(1) Records withheld, in part or in whole, because the initial denial authority considers them exempt under one or more FOIA exemptions;

(2) Disapproval of fee category claimed by a requester;

(3) Disapproval of a fee waiver or reduction of fees;

(4) Disputes regarding fee estimates;

(5) Disapproval of request for expedited processing;

(6) No record determinations;

(7) Lack of response to requester within the statutory time limits; or

(8) Any other determination the requester finds to be adverse in nature. The requester should submit an appeal in writing, citing the reasons for the appeal. The appeal should be sent to the IDA for forwarding to the proper appellate authority. The Office of the Army General Counsel (OGC) is the appellate authority for Regular Army, Army Reserve, Army National Guard records, records denied by the GC, AAFES, and those activities for which the Army is the executive agent for FOIA processing. The Director of Oversight and Compliance is the appellate authority for National Guard Bureau records. To avoid requesters submitting appeals directly to the appellate authority, IDAs should not include OGC's address in their response letters.

b. Upon receipt of an appeal, an IDA will—

(1) Send the appeal to OGC, together with a copy of the documents relevant to the appeal. The appeal should be accompanied by a copy of the response letter denying the initial request. The cover letter will list all attachments and

describe from where the records were obtained (if from a PA system of records, include the applicable System of Record Notice). If a file does not include any of the attachments described below, include the tab, and insert a page marked “not applicable” or “not used.” The order and contents of FOIA file attachments are as follows:

- (a) *Tab A or 1.* The original FOIA request and envelope (if applicable);
- (b) *Tab B or 2.* The IDA denial letter;
- (c) *Tab C or 3.* Copies of all responsive records, redacted and unredacted, single-sided; with the portions released and denied to the requester clearly marked;
- (d) *Tab D or 4.* Copies of administrative processing documents, including extension letters and “no records” certificates, in chronological order; and
- (e) *Tab E or 5.* Legal opinions(s).

(2) Assist OGC personnel as requested during the consideration of the appeal.

c. Time of receipt. A FOIA appeal has been received by the Army when it reaches the IDA.

d. Time limits. The requester will be advised to file an appeal so that it is postmarked no later than 90 calendar days after the date of the initial denial letter. If an appeal is not received, or if the appeal is postmarked after the conclusion of this 90-day period, the case may be considered closed. However, exceptions may be considered on a case-by-case basis. In cases where the requester is provided several incremental determinations for a single request, the time for the appeal will not begin until the date of the final response. Records that are denied will be retained for a period of 6 years to meet the statute of limitations requirement. Final determinations on appeals normally will be made within 20 working days after receipt. When the appellate authority has a significant number of appeals preventing a response determination within 20 working days, the appeals will be processed in a multitrack processing system, based at a minimum, on the three processing tracks established for initial requests. All the provisions of the FOIA apply also to appeals of initial denials, to include establishing additional processing queues as needed.

e. Response to the requester. When OGC makes a final determination to release all or a portion of records an IDA withheld, a written response and copy of the records so released should be forwarded promptly to the requester after compliance with any preliminary procedural requirements, such as payment of fees. Final denial or partial denial of an appeal must be made in writing by the appellate authority or by a designated representative. At a minimum, the appeal denial or partial denial response will include:

- (1) An explanation of the basis for the refusal in writing.
- (2) When the final refusal is based in whole or in part on a security classification, the explanation will include a determination that the record meets the cited criteria and rationale of the governing Executive order, and that this determination is based on a declassification review, with the explanation of how that review confirmed the continuing validity of the security classification.
- (3) The final denial will include the name and title or position of the official responsible for the denial.
- (4) In the case of an appeal for a total denial of records, the response will advise the requester that the information being denied does not contain meaningful portions that are reasonably segregable.
- (5) The response will advise the requester of the right to judicial review.

5–16. Timelines for appeals

The Army has received an appeal when the appeal reaches the IDA that issued the denial response to the requester. The IDA will forward the appeal to the proper appellate authority (OGC, except for FOIAs processed by the National Guard Bureau) with all required attachments (see para 5–15). Misdirected appeals should be referred expeditiously to the proper appellate authority. Final determinations on appeals normally will be made within 20 working days after receipt. If an appeal determination and notification cannot be made within 20 working days, the appellate authority will acknowledge to the requester, in writing, the date of receipt of the appeal, the circumstances surrounding the delay, and the anticipated date for substantive response. Requesters will be advised that, if the delay exceeds the statutory extension provision or is for reasons other than unusual circumstances, they may consider their administrative remedies exhausted. They may, however, without prejudicing their right of judicial remedy, await a substantive response. The Army appellate authority will continue to process the case expeditiously.

5–17. Judicial actions

a. This section states current legal and procedural rules for the convenience of the reader. This statement of rules does not create rights or remedies not otherwise available, nor does it bind DA or DOD to particular judicial interpretations or procedures. A requester may seek an order from a U.S. District Court to compel release of a record after administrative remedies have been exhausted; that is, when refused a record by the appellate authority or when the Army activity has failed to respond within the time limits prescribed by the FOIA and in this regulation.

b. The requester may bring suit in the U.S. District Court where the requester resides or has a place of business, the district where the record is located, or the District of Columbia.

c. The burden of proof is on the Army activity to justify its refusal to provide a record. The court will evaluate the case *de novo* (anew) and may elect to examine any requested record *in camera* (in private) to determine whether the denial was justified.

d. When an Army activity has failed to make a determination within the statutory time limits but can demonstrate due diligence in exceptional circumstances, such as negotiating with the requester to modify the scope of the request, the court may retain jurisdiction and allow the activity additional time to complete its review of the records.

(1) If the court determines that the requester's complaint is substantially correct, it may require the U.S. to pay reasonable attorney fees and other litigation costs.

(2) When the court orders the release of denied records, it may also issue a written finding that the circumstances surrounding the withholding raise questions whether activity civilian personnel acted arbitrarily and capriciously. In these cases, the special counsel of the Merit System Protection Board will conduct an investigation to determine whether disciplinary action is warranted. The activity is obligated to take the action the special counsel recommends.

(3) The court may cite the responsible official for contempt when an Army activity fails to comply with a court order to produce records that it determines have been withheld improperly.

e. *Freedom of information act lawsuits.* In general, FOIA lawsuits can be categorized as follows: failure to respond to a request within time frames established in the FOIA statute; challenge to the adequacy of search for responsive records; challenge to the application of a FOIA exemption; and procedural challenges, such as the application of waiver of fees. The following guidance is intended to cover all categories of complaints. In responding to litigation support requests, bear in mind the type of complaint that has given rise to the lawsuit and provide information that addresses the specific reason(s) for the complaint.

(1) FOIA litigation. For the Army, under the general oversight of OGC, FOIA litigation is the responsibility of the U.S. Army Legal Services Agency (USALSA), Litigation Division, General Litigation Branch. If you are notified of a FOIA lawsuit involving the Army, immediately contact the Litigation Branch at: U.S. Army Legal Services Agency, General Litigation Branch, (JALS-LT), 9275 Gunston Road, Fort Belvoir, VA 22060. The Army activity is responsible for forwarding a copy of the complaint to OGC, OTJAG Administrative Law (Government Information Practices), and to the DA FOIA Office.

(2) Each request for a record that may be affected by pending litigation involving the United States will be referred to the Staff Judge Advocate or legal officer of the command. He or she will promptly inform the General Litigation Branch of the substance of the request and the content of the record requested. If information is released for use in litigation involving the United States, the Chief, Army Litigation Division, must be advised of the release in accordance with AR 27-40. Information or records normally exempted from release (such as personnel and medical records) may be releasable to the judge or court concerned for use in litigation to which the United States is not a party. Refer such requests to the local Staff Judge Advocate or legal officer, who will coordinate with the General Litigation Branch.

(3) The General Litigation Branch will provide guidance on gathering information and assembling a litigation report necessary to respond to FOIA litigation.

(4) Personnel responsible for processing FOIA requests at the DA activity level will be aware of both ongoing and past litigation under the FOIA. Such information will provide management insights into the use of the nine exemptions by Army personnel.

f. Litigation reports for FOIA lawsuits. If required, see AR 27-40 for general guidance on litigation reports.

5-18. Tort claims and contract disputes

This section provides specific guidance for tort claims and contract disputes. Release of information or records is subject to the time limitations prescribed by the FOIA. The requester must be advised of the reasons for non-release or referral.

a. *Tort claims.* A claimant or a claimant's attorney may request a record that relates to a pending administrative tort claim filed against DA. Refer such requests promptly to the claims approving or settlement authority that has monetary jurisdiction over the pending claim. These authorities will follow AR 27-20. The request may concern an incident where the pending claim is not as large as a potential claim. In such a case, refer the request to the authority that has monetary jurisdiction over the potential claim. A potential claimant or the attorney may request information under circumstances clearly indicating that it will be used to file a tort claim, although none has yet been filed. Refer such requests to the Staff Judge Advocate or legal officer of the command. That authority, when subordinate, will promptly inform the Chief, U.S. Army Claims Service, of the substance of the request and the content of the record. (Mailing address: U.S. Army Claims Service (JACS-TCC), Fort George G. Meade, MD 20755-5360.) IDAs who

receive requests will refer them directly to the Chief, U.S. Army Claims Service. They will also advise the requester of the referral and the basis for it. The Chief, U.S. Army Claims Service, will process requests according to this regulation and AR 27–20.

b. Contract disputes. Each request for a record that relates to a potential contract dispute or a dispute that has not reached final decision by the contracting officer will be treated as a request for procurement records and not as litigation. However, FOIA officials will consider the effect of release on the potential dispute. FOIA officials may consult with the Legal Services Agency, Contract Appeals Division. (Mailing address: U.S. Army Legal Services Agency (JALS–CA), 9275 Gunston Road, Fort Belvoir, VA 22060). If the request is for a record that relates to a pending contract appeal to the Armed Services Board of Contract Appeals, or to a final decision that is still subject to appeal (that is, 90 days have not lapsed since the contractor received the final decision), then the request will be treated as involving a contract dispute, and referred to USALSA, Contract Appeals Division.

5–19. Non-U.S. Government source information for judicial actions

A requester may bring suit in a U.S. District Court to compel the release of records obtained from a non-Government source or records based on information obtained from a non-Government source. Such source will be notified promptly of the court action. When the source advises that it is seeking court action to prevent release, the Army activity will defer answering or otherwise pleading to the complainant as long as permitted by the court or until a decision is rendered in the court action of the source, whichever is sooner. In addition, make sure to advise USALSA Litigation Division.

Chapter 6 Fee Schedules and Procedures

6–1. General Provisions

Army activities will process fees for requested records under the FOIA in accordance with the provisions of this regulation, 32 CFR 286, and DODM 5400.07. For detailed information about fee rates, computation of fees, costs for special services, and refunds, see Subparts 286.28, 286.29, and 286.30 of 32 CFR 286 (DoD Freedom of Information Act Program).

6–2. Processing the receipt of Freedom of Information Act fees

a. The Treasurer of the United States has established two accounts for FOIA receipts. These accounts will be used for depositing all FOIA receipts, except for those receipts for FOIA requests processed by Army Working Capital Fund and nonappropriated fund activities. Activities should coordinate with their servicing finance office to establish procedures for depositing FOIA receipts to the applicable fund and to ensure they are employing the proper collection procedures.

(1) Receipt account 3210 (Fees and Other Charges for Services, FOIA). This account is used to deposit search fees, and fees for duplication and reviewing records to satisfy requests.

(2) Receipt account 3210 (Sale of publications and reproductions, FOIA). This account is used when depositing funds received from providing existing publications and funds meeting the Receipt Account Series description found in the Federal Account Symbols and Titles.

b. All money orders or checks remitting FOIA fees should be made payable to the U.S. Treasury.

c. See the DOD Financial Management Regulation, Volume 2B for guidelines for processing Army Working Capital Fund FOIA receipts.

6–3. Processing nonappropriated fund fees

a. Collection of nonappropriated fund (NAF) fees for the Army and Air Force Exchange Service are not made payable to the U.S. Treasury.

(1) Army and Air Force Exchange Service: Collection of all funds remitted for Exchange FOIA processing should be payable to the “Army and Air Force Exchange Service.”

(2) All FOIA invoices are processed by the Exchange Office of the General Counsel and presented to the requester either at the time of final response or when advance payment is required by statute in accordance with 5 USC 552(4)(A)(v).

(3) Remittances are accepted in U.S. Dollars by check or money order at the following address: Army and Air Force Exchange Service, Office of General Counsel – FOIA, 3911 S. Walton Walker Blvd., Dallas, TX 75236–1598. Other payment options are available upon request.

b. Collection of Army non-appropriated funds (NAF) for Headquarters, U.S. Army Installation Management Command (HQ IMCOM) and its garrisons are not reported to or made payable to the U.S. Treasury.

(1) Collection of Army NAF fees from FOIA requests to NAF morale, welfare, and recreation (MWR) activities at HQ IMCOM and its garrisons are processed as follows:

(a) Garrisons: Requester fees are remitted by check or money order to the applicable garrison FOIA office address and the checks or money orders are made payable to “location MWR” for the amount on the DD Form 2086. The financial office will deposit the check or money order in the NAF Financial Management Support Services Office.

(b) HQ IMCOM: When NAF fees are collected at HQ IMCOM, the remittance check is made payable to “IMCOM G9 MWR” and sent to the following address: HQ US Army Installation Management Command, FOIA Office, 2405 Gun Shed Road, Joint Base Fort Sam Houston, Texas 78234–1223.

c. A copy of the garrison or HQ IMCOM NAF MWR invoice and a copy of the DD Form 2086 should be attached to the Request for Fee Letter that goes to the requester asking for fee payment.

Chapter 7

Education and Training

7–1. Purpose

The purpose of the education and training programs is to promote a positive attitude among Army personnel and raise the level of understanding and appreciation of the DOD FOIA Program, thus improving interaction with members of the public, transparency, and public trust in DOD.

7–2. Responsibility

The head of each activity is responsible for the establishment of education and training programs on the provisions of FOIA and the requirements of this regulation. The education programs should be targeted toward all members of the command to develop a general understanding and appreciation of the Army FOIA Program. The training programs should be focused on those personnel who are involved in the day-to-day processing of FOIA requests, and should provide a thorough understanding of the procedures outlined in this regulation.

7–3. Implementation

To ensure uniformity of interpretation, all major education and training programs concerning the implementation of this regulation should be coordinated with the DA FOIA Office, which in turn will coordinate with the Defense Freedom of Information Act Policy Office (DFOIPO) as needed.

7–4. Scope and principles

Each Army activity will design its FOIA education and training programs to fit the particular requirements of personnel dependent on their degree of involvement in the implementation of this regulation. The FOIA training program should be designed to accomplish these objectives:

a. Familiarize personnel with the requirements of the FOIA and its implementation as specified by FOIA legislation, DODD 5400.07, and this regulation.

b. Instruct personnel, who act in FOIA matters, in the provisions of this regulation, advising them of the legal hazards involved and the strict prohibition against the arbitrary withholding of information.

c. Provide for the procedural and legal guidance and instruction, as may be required, in the discharge of the responsibilities of initial denial and appellate authorities.

d. Advise personnel of the consequences of noncompliance with the FOIA.

7–5. Web-based Freedom of Information Case Tracking System training

The FACTS includes a web-based tutorial that covers the most commonly-used features of the system (accessible to registered FACTS users). This tutorial has several modules focused on how to use the FACTS System.

7–6. Army training modules

In addition to the FACTS tutorial, FOIA training modules are available through the Army Learning Management System, an online training and education system for Soldiers and civilians. This training will supplement command specific FOIA training. The DA web-based FOIA training, available from the Army Learning Management System, includes the following modules:

a. Freedom of information act overview. This initial orientation module introduces new Army personnel to fundamental FOIA requirements.

b. Freedom of information action specialized (intermediate). This more comprehensive module is designed for FOIA officers and analysts within the Army.

c. Freedom of information act managerial. This advanced module has been customized for FOIA managers and contains “specialized” content applicable to managerial FOIA duties within the Army.

Chapter 8

Freedom of Information Act Library

8–1. General provisions

DA will provide an appropriate electronic database where the public may review the records described in paragraphs 8–2*a* through 8–2*d* of the regulation. In addition to the records described, DA may elect to place other records in its FOIA library and make them electronically available to the public. The Army may share library facilities with DOD components if the public is not unduly inconvenienced and also may establish decentralized FOIA libraries.

a. DA provides a FOIA Library where the public has the ability to review FOIA records as described in this regulation. The Army FOIA Library is operated by the DA FOIA Office at the following website <https://www.rmda.army.mil/readingroom/>.

b. When appropriate, the cost of copying may be imposed on the person requesting the material from the electronic reading room in accordance with 32 CFR 286, Subpart F.

c. All documents posted in the FOIA electronic library will be tagged with the following metadata:

(1) Document title.

(2) Author.

(3) Author title.

(4) Keywords on every document will have “FOIA” as a keyword, in addition to other relevant keywords, to help the public locate the document with an internet search engine.

8–2. Record availability

The FOIA requires that records described in 5 USC 552(a)(2)(A), (B), (C), and (D), created on or after 1 November 1996, will be made available electronically in the FOIA reading room (now called FOIA Library) for inspection and copying, unless such records are published and copies are offered for sale. All portions determined to be exempt in accordance with 5 USC 552 will be deleted from all 5 USC 552(a)(2) records made available to the general public. In every case, justification for the deletion must be fully explained in writing, and the extent of such deletion will be indicated on the record that is made publicly available, unless such indication would harm an interest protected by an exemption under which the deletion was made. If technically feasible, the extent of the deletion in electronic records or any other form of record will be indicated at the place in the record where the deletion was made. However, the Army may publish in the Federal Register a description of the basis upon which it will delete identifying details of particular types of records to avoid clearly unwarranted invasions of privacy, or competitive harm to business submit- ters. In appropriate cases, the Army may refer to this description instead of writing a separate justification for each deletion. 5 USC 552(a)(2)(A), (B), (C), and (D) records are as follows:

a. (a)(2)(A) Records. Final opinions, including concurring and dissenting opinions, and orders made in the adjudication of cases, as defined in 5 USC 551, that may be cited, used, or relied upon as precedents in future adjudications. (5 USC 552 (a)(2)(A) records).

b. (a)(2)(B) Records. Statements of policy and interpretations that DA has adopted and are not published in the Federal Register.

c. (a)(2)(C) Records. Administrative staff manuals and instructions, or portions that establish Army policy or interpretations of policy that affect a member of the public. This provision does not apply to instructions for employees on tactics and techniques to be used in performing their duties, or to instructions relating only to the internal management of the Army activity. Examples of manuals and instructions not normally made available are:

(1) Those issued for audit, investigation, and inspection purposes, or those that prescribe operational tactics, standards of performance, or criteria for defense, prosecution, or settlement of cases.

(2) Operations and maintenance manuals and technical information concerning munitions, equipment, systems, and foreign intelligence operations.

d. (a)(2)(D) Records. Copies of all records that have been released in response to a FOIA request that:

(1) Have become or are likely to become the subject of later requests for substantially the same records; or

(2) Have been requested three or more times.

e. If a requester submit a FOIA request for FOIA-processed (a)(2) records, and insist that the request be processed, Army activities will process the FOIA request. However, the activities have no obligation to process a FOIA request for 5 USC 552(a)(2)(A), (B), and (C) records because these records are required to be made public and not FOIA-processed under paragraph (a)(3) of the FOIA.

8-3. Indexes: “(a)(2) Materials”

a. The DA FOIA/PA Office will maintain in the facility an index of materials described in paragraphs 8-2a through 8-2d that are issued, adopted, or promulgated after 4 July 1967. No “(a)(2)” materials issued, promulgated, or adopted after 4 July 1967 that are not indexed and either made available or published may be relied on, used, or cited as precedent against any individual unless such individual has actual and timely notice of the contents of such materials. Such materials issued, promulgated, or adopted before 4 July 1967 do not need to be indexed, but must be made available upon request if not exempted under this part.

b. The DA FOIA Office will promptly publish quarterly or more frequently, and distribute, by sale or otherwise, copies of each index of “(a)(2)” materials or supplements thereto unless it publishes in the Federal Register an order containing a determination that publication is unnecessary and impracticable. A copy of each index or supplement not published will be provided to a requester at a cost not to exceed the direct cost of duplication as set forth in 32 CFR 286, Subpart F.

c. Each index of “(a)(2)” materials or supplement thereto will be arranged topically or by descriptive words instead of by case name or numbering system so that members of the public can readily locate material. Case name and numbering arrangements, however, may also be included for Army convenience.

d. A general index of FOIA-processed (a)(2) records both in hard copy and electronic will be made available to the public.

8-4. Other materials

a. Any available index of Army material published in the Federal Register, such as material required to be published by Section 552(a)(1) of the FOIA, will be made available in the Army FOIA Library and electronically to the public.

b. Although not required to be made available in response to FOIA requests or made available in FOIA libraries, “(a)(1)” materials will, when feasible, be made available in FOIA libraries for review and copying, and by electronic means. Examples of “(a)(1)” materials are: descriptions of an agency’s central and field organizations, and to the extent they affect the public, rules of procedures, descriptions of forms available, instructions for the scope and contents of papers, reports, or examinations, and any amendment, revision, or related reports.

Chapter 9 Reports

9-1. General

a. The FOIA Annual Report consists of non-litigation-related statistical and specific data regarding the processing of FOIA requests. FACTS is able to capture, calculate, and produce all the data required for the Annual FOIA Report. This data includes statistical information on cases processed by Army activities (required fields when opening and closing individual cases). Additionally, information pertaining to appealed cases is provided separately by OGC when appropriate.

b. Users can view command annual reports from the FACTS Reports tab.

c. Army activities should prepare their annual report using the latest version of DD Form 2564 (Freedom of Information Act (FOIA/Operations Security) (OPSEC) Desk Top Guide). Guidance for producing the report is provided within the DD Form 2564 with embedded links.

9-2. Reporting requirements

a. All Army activities (Army Staff components, ACOMs, ASCCs, DRUs, and activities where the Army acts as the Executive Agent for FOIA related activities) will submit a FOIA Annual Report.

b. The Annual FOIA Report is mandated by the FOIA statute and generated every new fiscal year. Each Army activity will report the required statistics for the preceding fiscal year on those items prescribed in the FOIA Annual Report guidelines located within the DD Form 2564 and guidance provided by the Army FOIA Office. Some of the statistics required will be provided by DFOIPO. Army activities should not complete DD Form 2564 entries that have the following note: the Defense Freedom of Information Policy Office (DFOIPO) will satisfy this requirement. Each

Army activity headquarters will forward a consolidated report (report includes subordinate activities/commands) after the end of the fiscal year to the DA FOIA Office. The DA FOIA Office will submit a consolidated Army report to DOD. A copy of the Army's consolidated report may be viewed by the public in the Army's FOIA Library or on the DA FOIA Office web-page.

c. The DOD FOIA Improvement Plan for EO 13392 requires all combatant command service components (for example, U.S. Army Africa, U.S. Army Central, and U.S. Army Special Operations Command) to report their FOIA numbers through their military services, rather than through the combatant commands, regardless of the context of the responsive documents.

9–3. Reporting timeline

a. The DFOIPO determines the content and format of the annual FOIA report.

b. Army activities will submit the annual FOIA report to the DA FOIA Office for consolidation and subsequent submission to DFOIPO in accordance with timetables set by this regulation and any additional yearly guidance issued by DA FOIA.

(1) Each reporting activity will submit the information requested on the latest version of the DD Form 2564. This reporting form has 12 sections plus an extra page for section IV with detailed instructions for each section and each item within the sections. The form is available in pdf format at the DOD website for forms <https://www.esd.whs.mil/directives/forms/>.

(2) Each Army activity headquarters will submit a consolidated report that includes data from itself and its subordinate commands and activities.

(3) The DA FOIA Office will compile the data submitted by all Army activities' headquarters and submit a consolidated report to the Office of the Chief Management Officer, Directorate for Oversight and Compliance (known as the DoD FOIA Policy Office) on or no later than 31 October after the fiscal year's end.

Appendix A

References

Section I

Required Publications

Unless otherwise stated, all publications are available at <https://armypubs.army.mil/>. Department of Defense regulations are available at <https://www.esd.whs.mil>. Public Laws, United States Codes, and Code of Federal Regulations are available at <https://www.gpo.gov/fdsys/search/home.action>.

AR 1–20

Legislative Liaison (Cited in para 5–5a(1)(a).)

AR 11–2

Managers' Internal Control Program (Cited in title page.)

AR 25–1

Army Information Technology (Cited in para 1–1.)

AR 25–22

The Army Privacy Program (Cited in para 1–7h(2).)

AR 25–400–2

The Army Records Information Management System (ARIMS) (Cited in para 3–7.)

AR 27–20

Claims (Cited in para 1–7h(4).)

AR 36–2

Audit Services in the Department of the Army (Cited in para 1–7h(7).)

AR 40–66

Medical Record Administration and Healthcare Documentation (Cited in para 1–7h(8).)

AR 40–400

Patient Administration (Cited in para 1–7h(9).)

AR 190–45

Law Enforcement Reporting (Cited in para 1–7h(11).)

AR 195–2

Criminal Investigation Activities (Cited in para 1–7h(12).)

AR 380–5

Department of the Army Information Security Program (Cited in para 1–7h(14).)

AR 530–1

Operations Security (Cited in para 1–7h(18).)

AR 600–85

The Army Substance Abuse Program (Cited in para 1–7h(20).)

AR 638–8

Army Casualty Program (Cited in para 3–2.)

AR 638–34

Army Fatal Incident family Brief Program (Cited in para 3–2.)

Section II

Related Publications

A related publication is a source of additional information. The user does not have to read the publication to understand this regulation. The Federal Acquisition Regulation is available at <https://www.acquisition.gov/far/>. USCAs are available at <https://www.gpo.gov/fdsys/>. Chairman of the Joint Chief of Staff instructions are available at:

<https://www.dtic.mil/>. Executive orders are available at <https://www.archives.gov/federal-register/executive-orders/disposition.html/>. The Code of Federal Regulations is available at <https://ecfr.gpoaccess.gov/>.

AR 10–87

Army Commands, Army Service Component Commands, and Direct Reporting Units

AR 15–6

Procedures for Investigating Officers and Boards of Officers

AR 20–1

Inspector General Activities and Procedures

AR 25–2

Information Assurance

AR 25–30

Army Publishing Program

AR 27–10

Military Justice

AR 27–40

Litigation

AR 27–60

Intellectual Property

AR 70–31

Standards for Technical Reporting

AR 215–8/AFI 34–211(I)

Army and Air Force Exchange Service Operations

AR 360–1

The Army Public Affairs Program

AR 380–10

Foreign Disclosure and Contacts with Foreign Representatives

AR 381–45

Investigative Records Repository

AR 385–10

The Army Safety Program

AR 525–15

Software Reprogramming for Cyber Electromagnetic Activities

AR 600–8–104

Army Military Human Resource Records Management

AR 608–18

The Army Family Advocacy Program

AR 690 series

Civilian Personnel Publications

AR 690–11

Use and Management of Civilian Personnel in Support of Military Contingency Operations

AR 690–12

Equal Employment Opportunity and Diversity

AR 690–200

General Personnel Provisions

AR 690–300

Employment (Civilian Personnel)

AR 690–335–1
Evaluation of Employees for Promotion and Internal Placement

AR 690–351–1
Reduction in Force

AR 690–400
Total Army Performance Evaluation System

AR 690–500
Position Classification, Pay and Allowances

AR 690–600
Equal Employment Opportunity Discrimination Complaints

AR 690–700
Personnel Relations and Services

AR 690–900
Civilian Personnel – General and Miscellaneous

AR 690–950
Career Program Management

AR 690–950–4
Military Intelligence Civilian Excepted Career Program

AR 690–990–2
Hours of Duty, Pay and Leave, Annotated

DA Pam 25–30
Consolidated Index of Army Publications and Blank Forms [electronic search tool; data updated periodically]

DA Pam 25–403
Guide to the Recordkeeping in the Army

DA Pam 50–5
Nuclear Accident or Incident Response and Assistance Operations

DA Pam 385–40
Army Accident Investigations and Reporting

DA Pam 385–90
Army Aviation Accident Prevention Program

DOD 7000.14–R
Financial Management Regulation

DOD Directorate of Administration and Management Administrative Instruction Number 108
Office of the Secretary of Defense and Joint Staff (JS) Freedom of Information Act (FOIA) Program

DOD Federal Acquisition Regulation Supplement, Subpart 227.4
Technical Data, Other Data, Computer Software and Copyrights

DOD Regulation 5400.11–R
Department of Defense Privacy Program, May 14, 2007

DODD 5000.11
Data Elements and Data Codes Standardization Program, December 7, 1964

DODD 5100.03
Support of the Headquarters of Combatant and Subordinate Unified Commands, February 9, 2011

DODD 5143.01
Under Secretary of Defense for Intelligence, April 22, 2015

DODD 5200.01, Volume 4
DOD Information Security Program: Controlled Unclassified Information, May 9, 2018

DODD 5230.09

Clearance of DOD Information for Public Release, August 22, 2008

DODD 5230.24

Distribution Statements on Technical Documents, August 23, 2012

DODD 5230.25

Withholding of Unclassified Technical Data From Public Disclosure, November 6, 1984 (Incorporating Change 1, August 18, 1995)

DODD 5400.07

DOD Freedom of Information Act Program, January 2, 2008

DODI 1300.18

DOD Personnel Casualty Matters, Policies, and Procedures

DODI 5400.04

Provision of Information to Congress, January 30, 1978

DODI 5400.16

DOD Privacy Impact Assessment (PIA) Guidance

DODM 5200.01–R

DOD Information Security Program Regulation, authorized by DOD Directive 5200.1

DODM 7220.9–M

Department of Defense Accounting Manual, authorized by DOD Instruction 7220.9

DODM 8910.1–M

DOD Procedures for Management of Information Requirements

EO 12600

Pre-disclosure Procedures for Confidential Commercial Information, June 23, 1987

EO 12866

Regulatory Planning and Review, September 30, 1993

EO 12958

Classified National Security Information, April 17, 1995

EO 13392

Improving Agency Disclosure of Information, December 14, 2005

Federal Register, Volume 40, page 28948, July 9, 1975

Office of Management and Budget, Privacy Act Implementation, Guidelines and Responsibilities

OPM Operating Manual, Update 13

The Guide to Personnel Recordkeeping, June 1, 2011

PL 86–36

National Security Agency Act of 1959

PL 101–189

National Defense Authorization Act for Fiscal Years 1990 and 1991

5 CFR, Part 297.401

Conditions of disclosure

32 CFR, Part 286

DOD Freedom of Information Act (FOIA) Program

32 CFR, Part 286–12

Schedule of fees

5 USC 551

Administrative Procedures Act, definitions

5 USC 552

Public information; agency rules, opinions, orders, records, and proceedings

5 USC 552a, as amended

The Privacy Act of 1974, Records maintained on individuals

10 USC 128

Physical Protection of Special Nuclear Material Limitation on Dissemination of Unclassified Information

10 USC 130

Authority to Withhold from Public Disclosure Certain Technical Data

10 USC 1102

Confidentiality of Medical Quality Assurance Records: Qualified Immunity for Participants

10 USC 2305(g)

Prohibition on Release of Contractor Proposals

10 USC 2320–2311

Rights in Technical Data

10 USC 2328

Release of Technical Data under Freedom of Information Act: Recovery of Costs

18 USC 798

Communication Intelligence

18 USC 3500

The Jencks Act

28 USC 1746

Unsworn Declarations Under Penalty of Perjury

32 USC 3717

Interest and Penalty on Claims

35 USC Sections 181 – 188

Patent Secrecy

42 USC 2162

Restricted Data and Formerly Restricted Data

44 USC Chapter 33

Disposal of Records

44 USC 3301

Definition of records

50 USC 401a(4)

Definitions

Section III

Prescribed Forms

Unless otherwise indicated, DA forms are available on the Army Publishing Directorate (APD) website <https://armypubs.army.mil> and DD forms are available on the Executive Services Directorate (ESD) website <https://www.esd.whs.mil/directives/forms/>.

DA Form 4948–R

Freedom of Information Act (FOIA/Operations Security) (OPSEC) (Prescribed in para 1–8*b*(2)).

DD Form 2086

Record of Freedom of Information (FOI) Processing Cost (Prescribed in para 4–2*d*.)

DD Form 2564

Freedom of Information Act (FOIA/Operations Security) (OPSEC) Desk Top Guide (Prescribed in para 9–1*c*.)

Section IV

Referenced Forms

Unless otherwise indicated, DA forms are available on the APD website <https://armypubs.army.mil>.

DA Form 11–2

Internal Control Evaluation Certification

DA Form 2028

Recommended Changes to Publications and Blank Forms

Appendix B

Initial Denial Authorities

B-1. Administrative Assistant to the Secretary of the Army

The AASA is authorized to act for the Secretary of the Army on requests for all records maintained by the Office of the Secretary of the Army and its serviced activities, as well as requests requiring the personal attention of the Secretary of the Army. This authority includes civilian equal employment opportunity actions. (See DCS, G-1 for military equal opportunity actions). The AASA has delegated IDA responsibilities to the Senior Counsel, Office of the Administrative Assistant Secretary of the Army (OAASA). In addition, the Senior Counsel, OAASA, on behalf of the AASA, will review requests for records not clearly within the functional responsibility of any other IDA, designate the most appropriate agency to provide a response, and assign such records to that agency for review and redaction under the FOIA. Any agency so designated under this paragraph will fully cooperate with the Senior Counsel in carrying out the responsibilities assigned to that agency.

B-2. Assistant Secretary of the Army (Acquisition, Logistics and Technology)

The ASA (ALT) is authorized to act on requests for procurement records other than those under the purview of the Chief of Engineers and the Commander, AMC. The Chief Attorney and Legal Services Directorate acts on requests for non-procurement records of the ASA (ALT).

B-3. Assistant Secretary of the Army (Financial Management and Comptroller)

The ASA (FM&C) is authorized to act on requests for finance and accounting records. Requests for CONUS finance and accounting records should be referred to the Defense Finance and Accounting Service (DFAS), and for OCONUS finance and accounting records to the US Army Financial Management Command (USAFMCOM). The Chief Attorney and Legal Services Directorate, acts on requests for non-finance and accounting records of the ASA (FM&C).

B-4. Assistant Secretary of the Army (Manpower and Reserve Affairs)

The ASA (M&RA) is authorized to act on requests for civilian personnel records, personnel administration and other civilian personnel matters, except for equal employment opportunity (civilian) matters which will be acted on by the AASA.

B-5. Director of the Army Staff

The DAS is authorized to act on requests for all records of the Office of the Chief of Staff of the Army and its Field Operating Agencies. The Director of the Army Staff has delegated this authority to the Senior Counsel, OAASA. (See TJAG for General Officer Management Office actions).

B-6. Deputy Assistant Secretary of the Army (Review Boards)

The DASA (RB) is authorized to act on requests for the records, emails, and opinions relating to decisions of Army review boards. Requests for records relating to corrections, criminal investigations, internment, confinement, and correctional programs for U.S. prisoners will be acted on by the Provost Marshal General.

B-7. Deputy Chief of Staff, G-1

The DCS, G-1, is authorized to act on the following records: personnel board actions, equal opportunity (military) and sexual harassment, health promotions, physical fitness and well-being, Soldier for Life Program, command and leadership policy records, human immunodeficiency virus and suicide policy, substance abuse programs except for individual treatment records, which are the responsibility of the Surgeon General, and retiree benefits, services, and programs. This authority does not include individual personnel records of retired military personnel, which are the responsibility of the U.S. Army Human Resources Command; DA dealings with the U.S. Department of Veterans Affairs; U.S. Soldier's and Airmen's Home; retention, promotion, and separation records; all military education records including records related to the removal or suspension from a military school or class; U.S. Military Academy cadet records; recruiting and military occupational specialty policy issues; personnel travel and transportation entitlements; military strength and statistics; the Army Librarian; demographics; and human systems integration.

B-8. Deputy Chief of Staff, G-3/5/7

The DCS, G-3/5/7, is authorized to act on requests for records relating to strategy formulation, force development, individual and unit training policy, strategic and tactical command and control systems, nuclear and chemical matters, and use of DA forces.

B-9. Deputy Chief of Staff, G-4

The DCS, G-4, is authorized to act on requests for records relating to DA logistical requirements and determinations, policy concerning materiel maintenance and use, equipment standards, and logistical readiness.

B-10. Chief Information Officer/G-6

The CIO/G-6, is authorized to act on requests for records pertaining to Army information technology, command, control communications and computer systems and the Information Resources Management Program (automation, telecommunications, visual information, records management, publications, and printing).

B-11. The Inspector General

TIG is authorized to act on requests for all Inspector General records. Resolutions will either be coordinated by the Office of The Inspector General for HQDA actions or by the U.S. Army Inspector General Agency for field actions.

B-12. The Army Auditor General

The AAG acts on requests for records relating to audits done by the U.S. Army Audit Agency pursuant to AR 36-2. This includes requests for related records developed by the audit agency.

B-13. Deputy Chief of Staff, G-8

The DCS, G-8, acts on records relating to programming, material integration and externally directed reviews.

B-14. Deputy Chief of Staff, G-9

The DCS, G-9 acts on requests for records relating to planning, programming, execution, and operation of Army installations. This authority includes base realignment and closure activities, environmental activities other than litigation, facilities, housing activities, Residential Communities Initiative and Privatized Army Lodging privatization program records, and installation management support activities for DOD on Army installations,

B-15. Chief, National Guard Bureau

The CNGB has program oversight and IDA authority for FOIA requests made to the Army National Guard (ARNG) organizations of the 50 States, the Territories, and the District of Columbia. This oversight authority includes all records created and processed by ARNG organizations or personnel pursuant to Federal laws or regulations. These records include, but are not limited to: ARNG administrative investigations, organization and training, plans, operations, historical files, military support, domestic operations, drug interdiction and counterdrug activities, construction, civil works, aviation, financial and environmental matters, as well as medical and personnel records of current ARNG Soldiers and technicians. Records of former ARNG Soldiers and technicians, including deceased personnel, are processed by Human Resources Command. Records created by active duty ARNG personnel are processed by the respective organization the individual was assigned to while on active duty. Records of the NGB are processed pursuant to DOD 5400.7 and are not subject to this regulation.

B-16. Chief, Army Reserve

The CAR is authorized to act on requests for all personnel and medical records of Reserve Component military personnel, and all U.S. Army Reserve (USAR) records, unless the records clearly fall within another IDA's responsibility. Records under the responsibility of the Chief of Army Reserve include records relating to USAR plans, policies, and operations; changes in the organizational status of USAR units; mobilization and demobilization policies, active duty tours, and the Individual Mobilization Augmentation program.

B-17. Chief of Chaplains

The CCH is authorized to act on requests for records involving ecclesiastical relationships, rites performed by DA chaplains, and non-privileged communications relating to clergy and active duty chaplains' military personnel files.

B-18. The Judge Advocate General

TJAG is authorized to act on requests for records relating to claims, courts-martial, legal services, administrative investigations (other than those created and processed by ARNG organizations, and other than investigations resulting from an equal opportunity or equal employment opportunity complaint), and similar legal records. TJAG also acts on requests for General Officer Management Office actions, and records described elsewhere in this regulation if those records relate to litigation in which the United States has an interest.

B-19. Chief of Engineers (U.S. Army Corps of Engineers)

The COE and CG, ACE, is authorized to act on requests for records involving civil works, military construction, engineer procurement, and ecology; and the records of the U.S. Army Engineer divisions, districts, laboratories, and field operating agencies.

B-20. The Surgeon General (U.S. Army Medical Command)

TSG and CG, MEDCOM, is authorized to act on requests for medical research and development records, as well as the medical records of active duty military personnel, dependents, and persons given physical examination or treatment at DA medical facilities, including alcohol and drug treatment and test records.

B-21. The Provost Marshal General

The PMG and CG, U.S. Army Criminal Investigation Command (USACIDC), is authorized to act on all requests for Army policing matters, including law enforcement, criminal intelligence fusion, corrections, forensics, biometrics, physical security, high-risk personnel security, antiterrorism, and detention operations. This includes corrections and internment, confinement and correctional programs for U.S. prisoners (U.S. Army Corrections Command).

B-22. U.S. Army Criminal Investigation Command – U.S. Army Crime Records Center

The CG, USACIC, acts on requests for criminal investigative records of command headquarters, its subordinate activities, and military police reports. This includes criminal investigation records, and all military police records and reports.

B-23. Commanding General, U.S. Army Forces Command

The CG, FORSCOM, is authorized to act on requests for records within the FORSCOM functional area of responsibility such as training, plans, policies, operations, force generation, mobilization and demobilization planning, unit files and emails. This includes records of Headquarters, FORSCOM; subordinate organizations; special activities; and field operating agencies, unless such records clearly fall under the responsibility of another IDA. This authorization extends to records within the FORSCOM functional area of responsibility without regard to any prior status of FORSCOM IDA authority under previous versions of this regulation.

B-24. Commanding General, U.S. Army Human Resources Command

The CG, HRC, is authorized to act on requests for military personnel files relating to active duty (other than those of reserve and retired personnel) military personnel matters, personnel locator, physical disability determinations, and other military personnel administration records; records relating to military casualty and memorialization activities; heraldic activities, voting, records relating to identification cards, naturalization and citizenship, commercial solicitation, Military Postal Service Agency and Army postal and unofficial mail service. This authority does not include records relating to USAR plans, policies, and operations; changes in the organizational status of USAR units, mobilization and demobilization policies; active duty tours, and the individual mobilization augmentation program.

B-25. Commanding General, U.S. Army Materiel Command

The CG, AMC, is authorized to act on requests for records and emails of command headquarters and subordinate commands, units, and activities that relate to procurement, logistics, financial management functions, security assistance programs, supply and maintenance operations to include medical materiel and logistical operations. This authority includes IMCOM directorates and garrisons, U.S. Army Environmental Command; records that relate to facilities and housing activities and installation management support activities for IMCOM garrisons, as well as the execution and operation of IMCOM installations (other than base realignment and closure and environmental activities). Also included are records related to MWR activities and NAF and contracts.

B-26. Commanding General, U.S. Army Training and Doctrine Command

The CG, TRADOC, is authorized to act on FOIA requests for records within the command's functional area of responsibility, including records of its headquarters and major subordinate organizations; special activities and field operating activities; and schools and centers that relate to recruitment, accessions, initial military training, functional training, leader development and education, lessons learned, collective training, doctrine, training support, concepts, experimentation, and requirements determination.

B-27. Commanding General, U.S. Army Test and Evaluation Command

The CG, ATEC, is authorized to act on requests for the records of command headquarters and its subordinate commands, units, and activities relating to test and evaluation operations.

B-28. Commanding General, U.S. Army Combat Readiness Center/Safety Center

The CG, USARC/Safety Center, acts on requests for Army safety records.

B-29. Commanding General, U.S. Army Intelligence and Security Command

The CG, INSCOM is authorized to act on requests for intelligence and security records, foreign scientific and technological information, intelligence training, intelligence threat assessments, foreign liaison information, mapping and geodesy information, ground surveillance records, intelligence threat assessment, and missile intelligence data relating to tactical land warfare systems.

B-30. Director/Chief Executive Officer, Army and Air Force Exchange Service

The GC, Army and Air Force Exchange Service acts on requests for Exchange Service records, under AR 215-8/AFI 34-211(I).C-6.

B-31. Commanding General, U.S. Army Futures Command

The CG, AFC is authorized to act on requests for records of command headquarters and subordinate commands, cross-functional teams, units and activities that relate to research and development, pre-acquisition activities and modernization priorities.

B-32. Special initial denial authority

Special IDA authority may be designated on a case-by-case basis to act on records pertaining to a specific period of time, or to handle technical, scientific, special records collections, or records responsive to a FOIA request that is not covered by an existing IDA. To obtain current information on special designations contact the DA, FOIA Office.

B-33. Limited initial denial authority

The CG of any three star level command is authorized to act on requests for records, including emails, solely involving the inherent operations of their subordinate commands that are not otherwise covered by an existing IDA or delegation. Use of this limited initial denial authority requires coordination with the servicing legal advisor.

Appendix C

Internal Control Evaluation

C–1. Function

The function covered by this evaluation is the FOIA Program.

C–2. Purpose

The purpose of this evaluation is to ensure that prescribed policies, procedures, and responsibilities contained in 5 USC 552 are followed to allow access and release of Army records to the public. The document used to accomplish the control objective is in this regulation.

C–3. Instructions

Answers must be based on the actual testing of key internal controls (for example, document analysis, direct observation, sampling, and simulation). Answers that indicate deficiencies must be explained and the corrective action identified in supporting documentation. These internal controls must be evaluated at least once every 5 years. Certification that the evaluation has been conducted must be accomplished on DA Form 11–2 (Internal Control Evaluation Certification).

C–4. Test questions

a. Is a Freedom of Information Act Program established and implemented in your organization? Response: (Yes, No, NA); Remarks:

b. Is an individual appointed to implement FOIA responsibilities? Response: (Yes, No, NA); Remarks:

c. Are provisions of AR 25–55 (this regulation) concerning protection of OPSEC sensitive information regularly brought to the attention of managers responsible for responding to FOIA requests and those responsible for control of Army records? Response: (Yes, No, NA); Remarks:

d. Is the 20 working day time limit usually met when replying to FOIA requests? Response: (Yes, No, NA); Remarks:

e. When more than 20 working days are required to complete a response, is the FOIA requester informed about the circumstance requiring the delay and provided a projected date for completion? Response: (Yes, No, NA); Remarks:

C–5. Supersession

Not applicable.

C–6. Comments

Help make this a better tool for evaluating management controls. Submit comments to the U.S. Army Freedom of Information Office, Records Management and Declassification Agency, 9301 Chapek Road, Bldg. 1458, Fort Belvoir, VA 22060–5605.

Glossary

Section I

Abbreviations

AASA

Administrative Assistant to the Secretary of the Army

CFR

Code of Federal Regulations

CUI

controlled unclassified information

DA

Department of the Army

DCS, G-3/5/7

Deputy Chief of Staff, G-3/5/7

DFOIPO

Defense Freedom of Information Act Policy Office

DOD

Department of Defense

EO

executive order

FACTS

Freedom of Information Case Tracking System

FOIA

Freedom of Information Act

FOUO

for official use only

HQDA

Headquarters, Department of the Army

LES

law enforcement sensitive

OGC

Office of the Army General Counsel

OPSEC

operations security

PAO

Public Affairs Office

TJAG

The Judge Advocate General

USALSA

U.S. Army Legal Services Agency

USAR

U.S. Army Reserve

Section II

Terms

Action taken

One of several action status codes used in FACTS to indicate the closed state of the request. Valid codes are as follows: 1) Denied in Part – Some records were released to the requester and some records or portions were withheld. 2) Denied in Full – All records were withheld from the requester. 3) Granted – All records in their entirety, without redaction, were released to the requester. 4) Administratively Closed – Records were neither released nor withheld and the request was closed for some other reason.

Administrative appeal

A request by a member of the general public, made under the FOIA, asking the appellate authority of the Army to reverse a decision to withhold all or part of a requested record, deny a fee category claim by a requester, deny a request for expedited processing because of demonstrated compelling need, deny a request for waiver or reduction of fees, deny a request to review an initial fee estimate, or confirm that no records were located during the initial search. A requester may also appeal the failure to receive a response determination within the statutory time limits and any determination that the requester believes is adverse in nature.

Appellate authority

The Secretary of the Army or designee having jurisdiction for this purpose over a record, or any of the adverse determinations outlined in this regulation. The DA appellate authority is OGC.

Army activity

A specific area of organizational or functional responsibility within DA, authorized to receive and act independently on FOIA requests. In other words, an organization of a specific U.S. Army office where FOIA requests are assigned, tracked, and managed in FACTS.

Army record

a. The products of data compilation, such as books, papers, maps, and photographs, machine readable materials; or other documentary materials, regardless of physical form or characteristics, made or received by the U.S. Army under Federal law in connection with the transaction of public business and in DA possession and control at the time the FOIA request is made.

b. An Army record must exist and be within the possession and control of an Army activity at the time of the request to be considered subject to this regulation and the FOIA. An Army activity is under no obligation to create, compile, or obtain a record to satisfy a FOIA request.

c. If unaltered publications and processed documents, such as regulations, manuals, maps, charts, and related geophysical materials, are available through an established distribution system with or without charge, the provisions of 5 USC 552 (a)(3) normally do not apply and they need not be processed under the FOIA. Normally, documents disclosed to the public by publication in the Federal Register also require no processing under the FOIA.

Army Records Information Management System

A system for identifying, arranging, and retrieving Army records for reference and disposition according to the directive, usually an AR or DA pamphlet, which prescribes their creation, maintenance, and use.

Commercial use

Refers to a request from, or on behalf of, one seeking information for a use or purpose that furthers the commercial, trade, or profit interest of the requester or the person for whom the request is made. To determine whether a requester belongs in this category, Army activities must determine how a requester will use the documents requested. Moreover, when an activity has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, activities should seek additional clarification before assigning the request to a specific category. When activities receive a request for documents for commercial use, they should assess charges, which recover the direct costs of searching for, reviewing for release, and duplicating the documents.

Compelling need

The failure to obtain requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual, or when the information is urgently needed by an individual primarily engaged in disseminating information in order to inform the public concerning actual alleged government activity and the value of the information would be lost if it is disseminated at a later time.

Compile

Produce (something, especially a list, report, or book) by assembling information collected from other sources.

Component

A Military Service, agency, field activity, or other organizational entity within DOD.

Computer searches

Information and data stored on magnetic media (or on any electronic device), including Internet traffic such as email, is subject to the FOIA. A computer search may involve retrieving data from a database using existing retrieval tools and methods or ad hoc programming such as writing a query. If extracting requested information requires a modification of existing programming, and the effort spent in making the modification is minimal, the Army activity should do what is necessary to retrieve the applicable records. Conversely, if retrieval of the information requested would require a great deal of time and effort, the computer search might be deemed impractical and unnecessary. Rejection of a computer search request based on resource requirements is a judgment call requiring supervisory and executive concurrence.

Consultation

The procedure whereby an Army activity responding to a FOIA request first forwards a record to another activity or agency for its review because that other organization has an interest in the information in the record.

Denial tests

To deny the release of a requested record that is in the possession and control of an Army activity, it must be determined that the record is exempt under one or more of the FOIA exemptions.

Denied in full

An Army decision not to release any part of a record or records in response to a FOIA request because all the information in the requested records is determined to be exempt under one or more of the FOIA's exemptions, or for some procedural reason (for example, no record is located in response to a FOIA request).

Department of Defense Component

A Military Service, agency, or field activity within the DOD. An element authorized to receive and act independently on FOIA requests. A DOD component has its own IDA, appellate authority, and legal counsel. DA is a DOD Component.

Disclosure

Release of a record or portion of a record in response to a FOIA request.

Discovery

The formal process by which litigants obtain information from each other for use in litigation.

Duplicate request

A request that is identical or nearly identical to a previously submitted request from the same requester. This includes identical requests received via different means (for example, email, facsimile, mail, and courier) at the same or different times.

Electronic data

Those records (including email) that are created, stored, and retrieved by electronic means. Email data includes the message and transmission data for all recipients (including bcc). Electronic data records do not include computer software, which is the tool used to create, store, or retrieve electronic data. See AR 525–15 for examples of software in the Army environment.

Electronic records

Records (including email) that are created, stored, and retrievable by electronic means. See electronic data.

Exclusions

The FOIA contains three special protection provisions referred to as record exclusions. Of these exclusions, DOD uses only two. These exclusions expressly authorize DOD law enforcement agencies to treat especially sensitive records under certain specified circumstances as not subject to the requirements of the FOIA. An Army activity considering invoking one of these exclusions will first consult with legal counsel and with DFOIPO. DOD will then consult with the Office of Information and Privacy, U.S. Department of Justice for further guidance.

Executive agent

The designation of specific responsibilities for the Secretary of the Army for entities external to DA. In most cases, executive agent responsibilities involve a service or function performed for some other Military Department, a Federal agency, or a public sector service organization. Specific examples include the Armed Services Board of Contract

Appeals, the DOD Explosive Safety Board, Red Cross support, and DOD Passport Agent Services managed by the AASA, and the National Defense University managed by the DCS, G-3/5/7.

Expedited processing

The processing by an Army activity of a FOIA requested using the justifications and procedures found in 32 C.F.R. §286.8(e)

Form

The storage media that hold content in digital form on which responsive information is provided to FOIA requesters. Examples are electronic documents, audiovisual material on tape, and all storage media that hold content in digital form and that are written and read by a laser (for example, all the various compact disk and digital video disk variations).

Format

A layout for data.

Freedom of information act litigation

Personnel responsible for processing FOIA requests at the DA level will be aware of litigation under the FOIA. Such information will provide management insights into the use of the nine exemptions by DA personnel. Whenever a complaint under the FOIA is filed in a U.S. District Court, the Army activity named in the complaint will forward a copy of the complaint by any means to HQDA, OTJAG (DAJA-LT), with an information copy to the Army OGC. In DA, HQDA OTJAG is also responsible for forwarding this information to the Office of the Army OGC and to the FOIA and/or PA Office.

Freedom of information act public liaison

An supervisory official to whom a FOIA requester can raise concerns about the service the FOIA requester has received from an Army activity, and who is responsible for assisting in processing delays, increasing transparency and understanding of the status of requests and resolving disputes.

Freedom of information act request

A written request for Army records that reasonably describes the record sought, made by any person, including a member of the public (U.S. or foreign citizen), an organization, or a business, but not including a Federal agency or a fugitive from the law, that either explicitly or implicitly invokes the FOIA, DODD 5400.07, this regulation, or Army activity instructions.

Freedom of information act requester

Any person, including a partnership, corporation, association, State or State agency, foreign government, foreign national, or a lawyer or other representative acting on behalf of any person who submits a FOIA request. This definition specifically excludes agencies within the Executive branch of the U.S. Government.

Freedom of information action requester service center

An Army activity that receives FOIA requests from and responds directly to the public.

Freedom of Information Case Tracking System

FACTS is a web-based enterprise solution providing a uniform data collection, reporting, and worldwide tracking of Army FOIA requests. All Army activities are required to enter, track, and close their FOIA requests in FACTS.

Glomar

A response that neither confirms nor denies the existence or nonexistence of records responsive to a request, and exemption 6 must be cited in the response. The facts of the existence or nonexistence would reveal personally private information, and the public interest in disclosure does not sufficiently outweigh the privacy interest. (See 32 CFR, Part 286.12 for additional information).

Information

Any communication or representation of knowledge such as facts, data, or opinions in any medium or form.

Inherently governmental activity

An activity that is so intimately related to the public interest as to mandate performance by U.S. government personnel because it requires the exercise of substantial discretion in applying government authority or in making value judgments in decisions for the U.S. Government.

Initial denial authority

An official who has been granted authority by the Secretary of the Army to deny access to records requested under the FOIA based on one or more of the nine categories of exemptions from mandatory disclosure. An IDA also has the authority to: deny a fee category claim by a requester; deny a request for expedited processing; deny a request for a waiver or reduction of fees; review a fee estimate; and confirm that no records were located in response to a request. DA's IDAs are listed in appendix B.

Initial determinations

The determination whether to make a record available upon request by a suitable Army official designated by an Army activity to do such.

Interim response date

Designates the date—within the allowed 20-day time limit—that the requester was notified of the probability that a response determination may not be possible within the required 20-day time limit.

Law enforcement investigation

An investigation conducted by an Army activity for law enforcement purposes relating to crime, waste, fraud, or national security. Such investigations may include gathering evidence for criminal prosecutions and for civil or regulatory proceedings.

Misdirected requests

A FOIA request for Army or DOD records that is addressed to a FOIA requester service center that is not the correct FOIA requester service center to process the request. Misdirected requests will be forwarded promptly to the correct Army activity or other Federal agency.

Multi-track processing

When an activity has a significant number of pending requests that prevents a response determination from being made within 20 working days, the requests shall be processed in a multitrack processing system based on the date of receipt, and the amount of work and time involved in processing the requests. At a minimum, three processing tracks will be established, all based on a first-in, first-out concept.

No records

A reasonable search of the files (manual or electronic) fails to identify records responsive to a request.

Non-record materials

Those Federally-owned informational materials that do not meet the statutory definition of records or that have been excluded from coverage by the definition (see 44 USC 3301). Excluded materials are extra copies of documents kept only for reference, stocks of publications and processed documents, and library or museum materials intended solely for reference or exhibit.

Nonresponsive information

Information within a responsive record that was not requested by a FOIA requester. Army activities will interpret FOIA requests liberally when determining which records are responsive, and may release nonresponsive information within those records. Responsive records may contain a significant amount of non-responsive information, the review of which may cause delays in responding to the FOIA requester.

Not a proper Freedom of Information Act request

The requester has failed to comply with procedural requirements, other than fee-related, imposed by this regulation or an Army activity.

Not an Army record

The information requested is not an Army record within the meaning of the FOIA and this regulation.

Ombudsman

The Office of Government Information Services is a resource for the public and the government. The office serves as the FOIA ombudsman for answering questions, tracking suggestions, and providing information.

Partial grant

An Army activity decision to disclose a record only in part in response to a FOIA request, deleting information determined to be exempt under one or more FOIA exemptions; or a decision to disclose some records in their entirety, but to withhold others in whole or in part.

Partial or total denial

Release of the record is denied in whole or in part in accordance with procedures set forth in the FOIA.

Perfected request

This label indicates that the request has been determined to be “perfected.” A request is considered perfected when the following conditions have been met: the request reasonably describes the record sought; contains a postal mailing address (or an email alternative); and arrives at the FOIA office of the Army activity in possession of the record or records. Requesters should also indicate a willingness to pay fees associated with the processing of their request or, in the alternative, ask about a waiver of fees being appropriate. In other words, a perfected request for records reasonably describes subject records and is made in accordance with published rules stating the time, place, fees (if any) and procedures to be followed.

Personal file

Documents unrelated to the conduct of agency business, or indirectly related to agency business but outside the scope of agency records. A personal file is not subject to the FOIA. FOIA case law predominantly refers to personal files as personal records.

Pre-decisional information

Information created before the decision maker reached a final decision.

Presumption of openness

Conduct of activities in an open manner consistent with statutory requirements. The FOIA Improvement Act of 2016 codifies an already-existing executive branch policy that restricts an agency’s discretionary power to withhold documents to situations where disclosure would result in foreseeable harm.

Privacy Act request

Defined in DOD 5400.11–R.

Privacy Act System of Records

Defined in DOD 5400.11–R.

Privacy interest

A privacy interest may exist in personal information even though the information has been disclosed at some place and time. If personal information is not freely available from sources other than the Federal Government, a privacy interest exists in its nondisclosure. The fact that the Federal Government expended funds to prepare, index and maintain records on personal information, and the fact that a requester invokes FOIA to obtain these records indicates the information is not freely available.

Public information

Information that is released to the public concerning the DOD and Army activities consistent always with the legitimate public and private interests of the American people.

Public interest

The interest in obtaining official Government information that sheds light on the Army’s performance of its statutory duties because the information falls within the statutory purpose of FOIA to inform citizens about what their Government is doing.

Reasonably segregable portions

The remaining segregable portions of a record that can be provided to any person requesting such record after the deletion of the portions that are exempt under the FOIA; when it reasonably can be assumed that a skillful and knowledgeable person could not reconstruct the excised information.

Receipt account

The Treasurer of the United States has established two accounts for FOIA receipts: Sale of Publications and Reproductions and Fees (Receipt Account 3210) and Fees and Other Charges for Services (also Receipt Account 3210). All money orders or checks for FOIA fees should be made payable to the U.S. Treasurer. These accounts are used for depositing all FOIA receipts, except receipts for Army Working Capital and NAF funded activities. These account numbers must be preceded by the appropriate disbursing office 2-digit prefix. Army Working Capital and NAF funded activity FOIA receipts will be deposited to the applicable fund.

Record

The records must be in the Army’s possession and control at the time the FOIA request is received, where “control” meets the criteria provided in DOD–M 5400.07. Records include papers, maps, photographs, machine-readable

materials or other documentation, regardless of physical or virtual (electronic) form, made or received by the Army in connection with the transaction of public business and preserved as evidence of decisions, operations, or other activities of the Army.

Records management

The planning, controlling, directing, organizing, training, promoting, and other managerial activities involved with respect to records creation, records maintenance and use, and records disposition to achieve adequate and proper documentation of the policies and transactions of the U.S. Army and effective and economical management of DA operations.

Records not reasonably described

A record has not been described with sufficient detail to enable the Army to locate it by conducting a reasonable search.

Redaction

The redaction process involves the use of effective redaction (manual or electronic) process that alters the copy (not the original) by removing the original text and overlaying the space previously occupied by the redacted text with a graphical element such as a black rectangle. The original text remains in the original file but not in the copy. Therefore, it cannot be uncovered by deleting the overlaying graphics. The redaction software documents and stores the redaction decision.

Referral

The process whereby an Army activity transfers a FOIA request to another DOD component or Federal agency.

Representative of the news media

Any person or entity that gathering news for an entity that is organized and operated to publish or broadcast news to the public. Examples of news media entities include television or radio stations broadcasting to the public at large and publishers of periodicals (instances where they qualify as disseminators of news and who make their products available for purchase or subscription by the general public). As traditional methods of news delivery evolve (for example, electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. In the case of “freelance” journalists, they may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though they are not actually employed by it. A publication contract would be the clearest proof, but Army activities may also look to the past publication record of a requester in making this determination. A request for records supporting the news dissemination function will not be considered to be a request that is for a commercial use. Representatives of the news media do not include private libraries, private repositories of government records, information vendors, data brokers, or similar marketers of information.

Request priority

Requests are processed in a multi-track (FACTS) processing system, based on the date of receipt, the amount of work and time it is reasonably expected to involve in processing the requests, and whether the request qualifies for expedited processing. All processing queues are based on a first-in, first-out concept.

Responsive

Information or records requested by a FOIA requester.

Review

Refers to the process of examining documents located in response to a FOIA request to determine whether one or more of the statutory exemptions permit withholding. The term also includes processing the documents for disclosure, such as excising them for release. Review does not include the time spent resolving general legal or policy issues regarding the application of exemptions.

Search

Time spent looking, both manually and electronically, for material that is responsive to a request.

Segregable information

A portion of a record that is fragmented and uninformative and can be reasonably isolated. This includes redundant information and personal material. In other words, segregable information is not inextricably intertwined with exempt information and can be extracted without distorting the remaining information.

Special mail services

Army activities are authorized to use registered mail, certified mail, certificates of mailing, and return receipts. Special mail services are authorized when a requester needs to establish proof of dispatch or receipt of FOIA correspondence. The requester is responsible for the costs of the special services.

Statement of facts

A chronological statement of all facts related to the FOIA request, beginning with receipt of the request, responses to the request, and searches for responsive records. The statement of facts should refer to supporting enclosed exhibits whenever possible.

Technical data

Includes recorded information, regardless of the form or method of the recording of a scientific or technical nature (including computer software documentation). This term does not include computer software, or data incidental to contract administration, such as financial and/or management information.

Time limits

The time period in the FOIA for an Army activity to respond to a FOIA request (ordinarily 20 working days from proper receipt of a “perfected” FOIA request).

Time of receipt

A FOIA appeal has been received by an Army activity when it reaches the office of an appellate authority having jurisdiction, usually OGC. Misdirected appeals should be referred expeditiously to OGC.

Trade secrets

A secret, commercially valuable plan, formula, process, or device that is used for the making, preparing, compounding, or processing of trade commodities and that is the end product of innovation or substantial effort. Records containing trade secrets or commercial or financial information that an Army activity receives from a person or organization outside the Government with the understanding that the information or record will be retained on a privileged or confidential basis in accordance with the customary handling of such records. Records that contain trade secrets are exempt from disclosure under FOIA to the extent to which disclosure is likely to cause substantial harm to the competitive position of the source providing the information, impair the Government’s ability to obtain necessary information in the future, or impair some other legitimate Government interest. Commercial or financial information submitted on a voluntary basis, absent any exercised authority prescribing criteria for submission is considered to be equivalent to a trade secret and is thereby protected without any requirement to show competitive harm.

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