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SECRETARY OF THE AIR FORCE

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Communications and Information

FREEDOM OF INFORMATION ACT PROGRAM

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This Air Force Manual (AFMAN) implements DoD Manual 5400.07, *DoD Freedom of Information Act (FOIA) Program*, Code of Federal Regulations (CFR) 286 of Title 32, and Air Force Policy Directive (AFPD) 33-3, *Air Force Information Management*. It applies to all Regular Air Force military, civilians; contractors in the performance of their duties to an Air Force contract; the Air Force Reserve, Air National Guard, and Civil Air Patrol when performing functions for the Air Force, and in accordance with DoD Directive (DoDD) 5100.3, *Support of the Headquarters of Combatant and Subordinate Unified Commands*. In the case of a conflict, this AFMAN takes precedence over any Air Force publication that addresses disclosure of Air Force records to the public. Commands may not change the basic procedures in this AFMAN. Use of the term “Major Command” (MAJCOM) throughout this AFMAN includes MAJCOMs, Field Operating Agency’s (FOAs), Direct Reporting Units (DRUs), and the Air Force Installation Mission Support Center (AFIMSC). This AFMAN requires the collection and or maintenance of information protected by the Privacy Act of 1974 authorized by Title 10, United States Code, Section 8013 and the Personnel Data System (PDS). The applicable Air Force Privacy System of Records Notices (SORN) F033 AF A, *Information Request-Freedom of Information Act*. Send recommended changes or comments to Air Force FOIA Public Liaison office (SAF/CIO A6XA), 1800 Air Force Pentagon, Washington DC 20330-1800, through appropriate channels, using Air Force (AF) Form 847, Recommendation for Change of Publication. The authorities to waive wing/unit level requirements in this publication are identified with a Tier (“T-0, T-1, T-2, T-3”) number following the compliance statement. See Air Force Instruction (AFI) 33-360, *Publications and Forms Management*, for a description of the authorities associated with the Tier numbers. Ensure that all records created as a result of processes prescribed in this publication are maintained IAW AFMAN (AFMAN) 33-363, Management of Records, and disposed of In Accordance With the Air Force Records Disposition Schedule (RDS) in the Air Force Records Information Management System (AFRIMS).

SUMMARY OF CHANGES

This publication has been substantially revised and needs to be completely reviewed. Major changes include rescinded DOD5400.7-R because of the renumbering to DoDM 5400.07, and updated AF guidance.



DoD MANUAL 5400.07

DoD FREEDOM OF INFORMATION ACT (FOIA) PROGRAM

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Purpose: This issuance:

- Implements the DoD FOIA Program pursuant to DoD Directive (DoDD) 5400.07, in accordance with the authority in DoDD 5105.53, DoDD 5105.82, and the July 11, 2014, Deputy Secretary of Defense Memorandum.
- Supplements Part 286 of Title 32, Code of Federal Regulations (CFR).
- Incorporates the provisions of the OPEN Government Act of 2007 and the FOIA Improvement Act of 2016.
- Promotes uniformity in the DoD FOIA Program by taking precedence over all DoD Component issuances that supplement and implement the DoD FOIA Program.

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SECTION 1: GENERAL ISSUANCE INFORMATION

1.1. APPLICABILITY. This issuance applies to OSD, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the DoD (referred to collectively in this issuance as the “DoD Components”).

1.2. INFORMATION COLLECTIONS. The DoD Annual FOIA Report to the U.S. Attorney General, referred to in Paragraphs 3.13., 6.2.a.(1)(b), and 6.3.b., has been assigned report control symbol DD-DCMO(A)1365 in accordance with the procedures in Volume 1 of DoD Manual (DoDM) 8910.01.

SECTION 2: RESPONSIBILITIES

The DoD Component heads implement the procedures prescribed in this issuance and ensure that any supplemental guidance and procedures are in accordance with Part 286 of Title 32, CFR, and DoDD 5400.07.

2.1 (Added)(AF) Responsibilities. The Air Force Chief Information Officer (SAF/CIO A6) has overall responsibility for the Air Force FOIA Program (FOIA). The Air Force FOIA Public Liaison (SAF/CIO A6XA) administers the procedures necessary to implement the Air Force FOIA Program, submits reports to Directorate for Oversight and Compliance (DO&C), and provides guidance and instructions to AF FOIA Requester Service Centers (RSCs). Responsibilities of other Air Force elements follow.

2.1.1. (Added)(AF) SAF/GCA is the Air Force FOIA Appellate Authority, which makes final decisions on FOIA administrative appeals. AFLOA/JACL serves as legal advisor to the Air Force FOIA Appeal Authority.

2.1.2. (Added)(AF) AF/JA, through AF/JAA and base legal offices, and AFIMSC/JA, provides all required administrative legal reviews.

2.1.3. (Added)(AF) At the HQ USAF and Secretary of the Air Force level, Initial Denial Authority (IDA) are GS-15/O-6 or above.

2.1.4. Added)(AF) Outside of the HQ USAF and Secretary of the Air Force level, commanders or vice commanders appoint IDA's within their organizations. MAJCOM IGs and Directors of Inquiries (IGQ) appoint IDA's within the IG for IG-held records. An IDA is GS-13/O-4 or above.

2.1.5. (Added)(AF) FOIA Managers (through MAJCOM FOIA RSC) must notify SAF/CIO A6XA in writing of IDA position titles. Send position titles only-no names. SAF/CIO A6XA provides SAF/IGQ a courtesy copy of correspondence designating IDA positions for IG records. When the commander changes the IDA designee position, MAJCOM FOIA IDA managers will immediately advise SAF/CIO A6XA. In the absence of the designated IDA, the individual filling/assuming the designated IDA's Air Force duty position acts as the IDA. (T-1).

2.1.6. (Added)(AF) Installation/Agency commanders:

2.1.6.1. (Added)(AF) Comply with FOIA Library requirements by establishing FOIA home page on installation public websites, to include the FOIA RSC and AF FOIA Public Liaison contact information (organizational mailing and email address, and phone number), with a link to the Air Force FOIA web page, <http://www.foia.af.mil> and the Public Access Link to submit request online, <https://www.efoia.milcloud/App/Home.aspx>. (T-1).

2.1.6.2. (Added) (AF) Implement this instruction in their commands/agencies and appoint a FOIA Manager in writing (through MAJCOM FOIA RSC). May appoint FOIA Monitor at the unit to serve as the Point of Contacts for the FOIA Managers to task the Office of Primary Responsibility (OPR) to locate records responsive to FOIA requests and respond to FOIA appeals. Send the name, phone number, office symbol, and e-mail address of a FOIA Manager to SAF/CIO A6XA, 1800 Air Force Pentagon, Washington DC 20330-1800 or via e-mail to usaf.pentagon.saf-cio-a6.mbx.af-foia@mail.mil. (T-1).

2.1.6.3. (Added)(AF) Assign legal review responsibilities for FOIA requested records. Air Force attorneys will review and provide written legal reviews for all FOIA responses, as well as provide all legal advice to the OPR, disclosure authorities, Initial Denial Authorities and FOIA Managers. Air Force attorneys ensure factual and legal issues raised by appellants are considered by the IDA prior to sending the FOIA appeal files to the Secretary of the Air Force's designee for final action. The responsibility for ensuring IDA's consider factual and legal issues rests with either the IDA, OPR, or the FOIA Manager. All attorney legal reviews will be documented to show hours and costs incurred and this information will be provided to the FOIA Managers. (T-1).

2.1.6.4. (Added)(AF) Ensure IDA's apply the policies and guidance in this instruction, along with the written recommendations provided by staff elements, when considering what decisions to make on pending FOIA actions. Where any responsive records are denied, the FOIA RSC, on behalf of the IDA, informs the requester in writing (response letters) of the nature of records or information denied, the FOIA exemption (see Section 5 for FOIA exemptions) supporting the denial, the reasons the records were not released, and gives the requester the appeal procedures. In addition, on partial releases, FOIA RSC's must ensure requesters can see the placement and general length of redactions with the applicable exemption indicated in Section 5. This procedure applies to all media, including electronic records. Providing placement and general length of redacted information is not required if doing so would harm an interest protected by a FOIA exemption. When working FOIA appeal actions for the appellate authority review:

2.1.6.4.1. (Added)(AF) Ensure that on appeals, prior to an appeal being forwarded to the Air Force appellate authority for final action, IDA's review the appeal and grant or deny (in full or in part) the requester's appeal of the earlier withholding of responsive records, or other adverse determination. If the IDA does not grant the appeal in full as requested by the requester, that portion of the appeal not granted is forwarded to the Air Force Appeal Authority for final action. (T-1).

2.1.6.4.2. (Added)(AF) When an IDA denies any appellate action sought by a FOIA requester, the IDA, or FOIA Managers (for no record, fee, fee estimates, or fee category appeals) will indicate in writing that the issues raised in the FOIA appeal were considered and rejected (in full or in part). Include this written statement in the file sent to the Secretary of the Air Force in the course of a FOIA appeal action. Send all appeal actions through the MAJCOM FOIA RSC. (T-1).

2.1.6.4.3. (Added)(AF) Ensure only the FOIA key players (FOIA Managers, OPR's, legal office, and IDA's) are involved with the coordination and review of FOIA actions. (T-1).

2.1.6.4.4. (Added)(AF) FOIA Managers must coordinate through MAJCOM FOIA RSC and provide SAF/CIO A6XA with an annual backlog reduction plan by 30 October each year and are sending the monthly status report for those units not meeting the 10% reduction goal. (T-1).

2.1.6.4.5. (Added)(AF) FOIA Managers must establish organizational mailboxes to assist FOIA requesters seeking information concerning the status of their FOIA request. (T-1).

2.1.7. (Added)(AF) Office of Primary Responsibility (OPR):

2.1.7.1. (Added)(AF) Provide requested records. Indicate/Redact withheld parts of records annotated with a FOIA exemption. Ensure requesters can see the placement and general length of redactions. This procedure applies to all media, including electronic records. Providing placement and general length of redacted information is not required if doing so would harm an interest protected by a FOIA exemption. (T-0).

2.1.7.2. (Added)(AF) Coordinate the release or denial of records requested under the FOIA with the IDA, servicing FOIA RSC and servicing legal office. (T-1).

2.1.7.3. (Added)(AF) Provide written recommendations to the IDA to determine whether or not to release records, and act as declassification authority when appropriate. (T-1).

2.1.7.4. (Added)(AF) Make frequently requested records [FOIA (a)(2)(D)] available to the public in the FOIA Library website via FOIA RSC. The OPR must request clearance of these records with their Public Affairs and coordinate with JA and FOIA RSC prior to posting as required by AFIs 17-100, *Air Force Information Technology (IT) Service Management*, and AFI 35-101, *Public Affairs Responsibilities and Management*, and AFI 35-102, *Security Policy and Review Process*. The FOIA Manager, in coordination with the functional OPR or the owner of the records, will determine qualifying records and assist with posting. (T-1).

2.1.8. (Added)(AF) FOIA Managers:

2.1.8.1. (Added)(AF) Process FOIA requests and ensure administrative correctness of all FOIA actions processed. Note, see Appendix 1-3. (T-1).

2.1.8.2. (Added)(AF) Obtain/Review recommendations from the OPR for requested records and assist with redaction as needed using Electronic FOIA (eFOIA) and authorized redaction tools. If using any other electronic redacting software FOIA Managers are

required to print and rescan in accordance with DoD policy (“New Redaction Policy”). Before releasing to the public, all documents will be converted to Portable Document Format (PDF) or scanned image (i.e., JPEG, TIFF, etc.). Note, do not release document to the public in native format (i.e., Word, Excel, etc.) unless specifically requested and approved by the FOIA Manager – consult with SAF/A6XA as necessary. (T-1).

2.1.8.3. (Added)(AF) Prepare/Coordinate on all proposed replies to the requester and sign response letters to requesters when IDA approve the total release of records. (T-1).

2.1.8.4. (Added)(AF) Make determinations as to whether or not the nature of requests are simple or complex where multitrack FOIA request processing queues exist. (T-1).

2.1.8.5. (Added)(AF) Approve or deny any requests for expedited processing. (T-1).

2.1.8.6. (Added)(AF) Provide status update to the requester on a routine basis. (T-1).

2.1.8.7. (Add)(AF) Provide the requester with an estimated completion date when specifically requested by the requester. (T-1).

2.1.8.8. (Added)(AF) Provide training to IDA’s and record OPR’s. (T-1).

2.1.8.9. (Added)(AF) Review publications/forms for compliance with this AFMAN. (T-1).

2.1.8.10. (Added)(AF) Conduct periodic program reviews with leadership. (T-1).

2.1.8.11. (Added)(AF) Approve or deny fee waiver requests and collect fees. (T-1).

2.1.8.12. (Added)(AF) Send extension notices. (T-1).

2.1.8.13. (Added)(AF) Sign “no record” responses. A no record response is an adverse determination that is commonly appealed to the appeal authority. Note, the FOIA Manager may decide at their discretion that a legal review should be completed.

2.1.8.14. (Added)(AF) Provide the requester the basis for any adverse Determination (i.e., no records, fee denials, fee category determinations, etc.) in enough detail to permit the requester to make a decision whether or not to appeal the decision, and provide the requester with appeal rights in all final response letters. Interim response letters should not include appeal rights. (T-1).

2.1.8.15. (Added)(AF) Document costs incurred, invoice requesters, and track/validate delinquent requesters in eFOIA to ensure payments and invoices have been applied accordingly. If payment has not been received after 30 days from the invoice date or final response date, ensure the requester is added to the Delinquent Requester list in eFOIA. Note, do not processed future requests until payment is received. No checks are to be uploaded into eFOIA; only apply the payment amount. (T-1).

2.1.8.16. (Added)(AF) Ensure that all time expended on FOIA cases (e.g., OPR/legal office hours and costs, etc.) is accounted for on DD Form 2086 and entered into eFOIA.

2.1.8.17. (Added)(AF) Validate and confirm that all data entered into eFOIA are accurate, to include the requester letter, DD Form 2086. The MAJCOM FOIA Managers are required to review the data from their base FOIA RSC entered into eFOIA is accurate, to include the requesters letter, received date, DD Form 2086, correspondence, etc. (T-1).

2.1.8.18. (Added)(AF) Must inform requesters of their appeal rights on adverse determination and provide contact information for Air Force FOIA Public Liaison officer and Office of Government Information Services on responses, including “no records” responses, full or partial denial of records, clarify or limit the scope of the request, denial of requests for expedited processing or a fee waiver. Include contact information for Air Force FOIA Public Liaison Officer on all responses. The requester has ninety (90) days from the date of the final response letter to file an appeal. Requesters may appeal a decision in writing to the Secretary of the Air Force through the FOIA RSC that provided them with the final decision, or submit an appeal online at the Air Force Public Access Link: <https://www.foia.milcloud/App/Home.aspx>. The requester must be specific as to why they are submitting the appeal and provide any additional information. (T-1).

2.1.8.19. (Added)(AF) Work with public affairs, OPR, and commanders to proactively post records that are likely to be of public interest (see 4.1.(6)). Submit records for publishing to the Library via eFOIA. SAF/CIO A6XA will make a determination whether to post them to the Library.

2.1.8.20. (Added)(AF) Keep FOIA website current. (T-1).

2.1.8.21. (Added)(AF) Provide SAF/CIO A6XA (through MAJCOM) with an annual backlog reduction plan by 30 October of each year for not meeting the 10% reduction goal as well as submit a monthly status report on progress toward meeting the goal. Include specific actions (i.e., review your current operations, procedures and staffing to fine tune your office, improve training, leadership commitment/engagement, etc.), estimated completion date, and status to close out backlog cases and 10 oldest cases (FOIA , appeal, and consultation). (T-1).

2.1.8.22. (Added)(AF) May make the decision to release requested records if the only information withheld from an Air Force record is a name under DoD's policy to normally withhold (applying the applicable balancing test) lists of names of current DoD personnel under the O-7 rank or civilian equivalent.

2.1.8.23. (Added)(AF) Initially deny fee category claims, requests for expedited processing, waiver or reduction of fees; and review fee and determine estimates. (T-1).

2.1.9. (Added)(AF) On appeals, FOIA Managers:

2.1.9.1. (Added)(AF) May reassess a fee category and/or fee estimate, overturning or confirming the initial determination. If appeal not granted in full, must forward appeal to Air Force Appeal Authority.

2.1.9.2. (Added)(AF) May reassess a request for expedited processing due to demonstrated compelling need, overturning or confirming the initial determination. If appeal not granted in full, must forward appeal to Air Force Appeal Authority.

2.1.9.3. (Added)(AF) May reassess a request for a waiver or reduction of fees, overturning or confirming the initial determination. If appeal not granted in full, must forward appeal to Air Force Appeal Authority.

2.1.10. (Added) (AF) FOIA monitors:

2.1.10.1 (Added)(AF) Serve as the Point of Contacts for the FOIA Managers to task the OPR to locate records responsive to FOIA Requests and respond to FOIA appeals. (T-1).

2.1.10.2. (Added)(AF) Assist OPR in reviewing all requested records to determine whether records are responsive to the request. Monitors also assist with redactions in consultation with the FOIA Manager, as appropriate. (T-1).

2.1.10.3. (Added)(AF) Ensure that a thorough search for records has been conducted by the OPR which will also complete the no records certification when records are not located for the request. (T-1).

2.1.10.4. (Added)(AF) Ensure all time expended on FOIA cases (i.e., OPR, IDA, legal office hours) is accounted for on DD Form 2086 and sent to the FOIA Manager with the responsive records. (T-1).

2.1.10.5. (Added)(AF) Ensure that any misdirected FOIA requests are immediately forwarded to the FOIA Manager for action. (T-1).

2.1.10.6. (Added)(AF) Promptly forward any records that are likely to be of public interest to the Air Force Library via the servicing FOIA RSC ahead of receiving a request. (T-1).

SECTION 3: GENERAL PROVISIONS

3.1. PUBLIC ACCESS TO DOD INFORMATION.

a. Pursuant to the FOIA, the public has the right to access agency records concerning U.S. Government activities. An agency record requested by a member of the public in accordance with Part 286 of Title 32, CFR, and this issuance must not be withheld in whole or in part unless the FOIA exempts the record, or parts of it, from disclosure.

b. The Directorate for Oversight and Compliance (DO&C), Office of the Deputy Chief Management Officer, maintains a DoD FOIA Handbook for the public to use in obtaining information from the DoD, as required by the FOIA. This handbook is a short, simple explanation of the FOIA and how the public can use it to access agency records. This handbook is posted on the FOIA section of the DoD Open Government Website at <http://open.defense.gov/Transparency/FOIA/FOIAHandbook.aspx>.

c. Individuals seeking DoD records should address their FOIA requests to a FOIA Requester Service Center (RSC) listed in Paragraph 3.2.a. or 3.2.b.. Addresses and contact information for the FOIA RSCs are available at the FOIA.gov Website, <http://www.foia.gov/report-makerequest.html>.

3.2. DOD COMPONENTS. The DoD Components listed in Paragraph 3.2.a. and 3.2.b. are referred to in this issuance as “DoD FOIA Program Components.”

a. The following DoD Components have their own FOIA programs, including a FOIA appellate authority.

- (1) Office of the Secretary of Defense/Joint Staff (OSD/JS).
- (2) Department of the Army.
- (3) Department of the Navy.
- (4) Department of the Air Force.
- (5) Defense Commissary Agency.
- (6) Defense Contract Audit Agency.
- (7) Defense Contract Management Agency.
- (8) Defense Finance and Accounting Service.
- (9) Defense Health Agency.
- (10) Defense Information Systems Agency.

- (11) Defense Intelligence Agency.
- (12) Defense Logistics Agency.
- (13) Defense Security Service.
- (14) Defense Threat Reduction Agency.
- (15) DoD Education Activity.
- (16) National Geospatial-Intelligence Agency.
- (17) National Reconnaissance Office.
- (18) National Security Agency/Central Security Service.
- (19) Office of the Inspector General of the Department of Defense.

b. The following DoD Components have their own FOIA programs; however, their FOIA appellate authority is the FOIA appellate authority for the OSD/JS as assigned in DoDD 5400.07.

- (1) Armed Services Board of Contract Appeals.
- (2) Defense Technical Information Center.
- (3) Joint Personnel Recovery Agency.
- (4) National Guard Bureau.
- (5) United States Africa Command.
- (6) United States European Command.
- (7) United States Central Command.
- (8) United States Northern Command.
- (9) United States Pacific Command.
- (10) United States Special Operations Command.
- (11) United States Southern Command.
- (12) United States Strategic Command.
- (13) United States Transportation Command.

c. The OSD/JS FOIA RSC processes requests for the following DoD Components:

- (1) Defense Acquisition University.

- (2) Defense Advanced Research Projects Agency.
- (3) Defense Equal Opportunity Management Institute.
- (4) Defense Legal Services Agency.
- (5) Defense Microelectronics Activity.
- (6) Defense Media Activity.
- (7) Defense POW/MIA Accounting Agency.
- (8) Defense Security Cooperation Agency.
- (9) Defense Technology Security Administration.
- (10) Defense Travel Management Office.
- (11) DoD Human Resources Activity.
- (12) DoD Test Resource Management Center.
- (13) Joint Improvised-Threat Defeat Agency.
- (14) Missile Defense Agency.
- (15) National Defense University.
- (16) Office of Economic Adjustment.
- (17) Office of Military Commissions.
- (18) Pentagon Force Protection Agency.
- (19) Uniform Services University of the Health Sciences.
- (20) Washington Headquarters Services.
- (21) White House Military Office.

3.3. FOIA RSCS.

a. Each DoD FOIA Program Component listed in Paragraphs 3.2.a. and 3.2.b. of this issuance must establish one or more FOIA RSCs.

(1). (Added)(AF) The Department of the Air Force provides a list of Air Force FOIA RSC and contact information that is available on the Air Force FOIA website at

<http://www.foia.af.mil>. Note, realignment of Air Force elements is frequent; addresses listed on the FOIA website are subject to change.

(2). (Added)(AF) The Department of the Air Force does not have a central repository for Air Force records. FOIA requests are addressed to the appropriate Air Force RSC that support in processing the requests or has custody of the record desired. In answering inquiries regarding FOIA requests, Air Force RSC will assist requesters in determining the correct Air Force RSC to address their requests. If there is uncertainty as to the ownership of the record desired, refer the requester to the Air Force RSC that is most likely to have the record.

b. Each FOIA RSC will have a website that serves to educate the public on the FOIA process. These websites will comply with DoD Instruction (DoDI) 8550.01. At a minimum, each website will provide:

(1) The address, telephone number, facsimile number, and organizational e-mail address to which the public can send FOIA requests.

(2) Name of the DoD FOIA Program Component's FOIA point of contact.

(3) A link to the DoD FOIA Handbook.

(4) A description of the types of records that can be requested from the DoD FOIA Program Component.

(5) The name and contact information for each of the DoD FOIA Program Component's FOIA Public Liaisons.

(6) Information on how a FOIA requester can obtain the status of their FOIA request (either by telephone or through the FOIA RSC website).

(7) A FOIA library as described in Section 4 or a link to the DoD FOIA Program Component's FOIA library, if the library is centralized.

c. The websites of DoD FOIA Program Component headquarters FOIA RSCs will link to the websites of the other FOIA RSCs within their Components.

d. The Internet home page of every DoD Component will link to the FOIA RSC for that DoD Component.

e. (Added)(AF) SAF/CIO A6XA will cover the requirements of section 3.3 on the Air Force FOIA website at <http://www.foia.af.mil>. Each FOIA RSC is required to establish a FOIA home page on installation public websites, as outlined in paragraph 2.1.6.1. (T-1).

3.4. FOIA PUBLIC LIAISONS. The DoD Components listed in Paragraph 3.2.a. will submit to the DO&C the names of personnel to serve as FOIA Public Liaisons. Each DoD FOIA Program Component will have at least one FOIA Public Liaison.

a. The FOIA Public Liaisons will:

(1) Ensure that the FOIA RSCs' websites comply with the requirements in Paragraph 3.3.b.

(2) Assist in the reduction of any delays in responding to requests.

(3) Increase transparency and understanding of request statuses.

(4) Assist in dispute resolution.

b. The FOIA Public Liaison for the DoD Components listed in Paragraph 3.2.b., the OSD/JS, and the Armed Services Board of Contract Appeals is in the DO&C.

c. **(Add)(AF) SAF/CIO A6XA is the Air Force FOIA Public Liaison office.**

3.5. UNOFFICIAL RELEASE OF DOD RECORDS. Records are considered part of the public domain when released to the public in response to a FOIA request or under circumstances in which a DoD official with the appropriate authority has authorized their release (e.g., a release under the DoD Mandatory Declassification Review Program, pursuant to DoD 5230.30-M). The disclosure of exempt records, without authorization by an appropriate DoD official, is not an official release of information. Such a release does not waive the authority of the DoD to assert FOIA exemptions to withhold the same records in response to a FOIA request.

3.6. DESCRIPTION OF REQUESTED RECORD. The requester is responsible for providing a reasonable description of the desired record that will enable the DoD Component to locate the record with a reasonable amount of effort.

a. A reasonable description contains sufficient information to permit an organized, non-random search for the record based on the DoD Component's filing arrangements and existing retrieval systems. If filing arrangement details are unknown, then the requester should provide sufficient event-related details, to include the circumstances that resulted in the record being created or the date and circumstances surrounding the event the record covers, to permit a person familiar with the DoD Component's filing arrangements to reasonably identify where such records would be located. The DoD Component'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.

b. The fact that a FOIA request appears broad or burdensome (e.g., contains a large volume of potentially responsive information) does not, by itself, entitle the DoD Component to deny the FOIA request on the grounds that it does not reasonably describe the record sought.

c. **(Added)(AF) Air Force elements must make reasonable efforts to find the records described in FOIA requests. Reasonable efforts means searching all activities and locations most likely to have the records, and includes staged or retired records, as well as complete and thorough searches of relevant electronic records, such as databases, word processing, and electronic mail files. (T-0).**

3.7. COMBATANT COMMANDS. The Combatant Commands' FOIA programs are placed under OSD jurisdiction instead of the administering Military Department or the Chairman of the Joint Chiefs of Staff. This is an exception to DoDD 5100.03 in that it authorizes and requires the Combatant Commands to process FOIA requests in accordance with Part 286 of Title 32, CFR, and this issuance.

a. Documents originated by the Military Service components of the Combatant Commands while acting in a headquarters capacity for joint exercises or operations under Combatant Command authority are joint in nature and are under the cognizance of the Combatant Commands.

b. Documents created for a Combatant Command, yet located within a Defense Criminal Investigative Organization or Military Department Counterintelligence Organization or accident investigation file at the Military Service component, are Military Service records and the release, initial denial, and appellate authorities remain with the Military Service. However, the Military Service component will consult with the responsible Combatant Command during the review process.

c. Documents created by the Military Service components of the Combatant Commands below the headquarters level are considered Military Service records. Examples would include base support, personnel, and logistical records.

3.8. SECURITY CLEARANCES AND ACCESS. Due to the nature of their duties and responsibilities, FOIA personnel require access to all records requested through their respective activities, regardless of the sensitivity or classification of the information. The DoD Components must ensure that FOIA personnel have the appropriate clearances and access to perform their duties and are provided the appropriate electronic equipment to process and transmit classified records.

3.9. RELATIONSHIP BETWEEN THE FOIA AND THE PRIVACY ACT.

a. Requesters seeking records about themselves contained only in a Privacy Act system of records will have their requests processed pursuant to Section 552a of Title 5, U.S.C. (also known as the "Privacy Act of 1974," as amended, and referred to as the "Privacy Act" in this issuance) and implemented within the DoD by DoD 5400.11-R.

(1) If the Privacy Act system of records is exempt from the access provisions of Section (d)(1) of the Privacy Act, and if the records or any portion thereof are exempt pursuant to FOIA,

the DoD Component will advise of the appropriate Privacy Act and FOIA exemption(s) in its response. Appeals must be processed pursuant to both the FOIA and the Privacy Act.

(2) If the Privacy Act system of records is not exempt from the access provisions of Section (d)(1) of the Privacy Act, a DoD Component cannot claim a FOIA exemption on the information and must release all information to the first-party requester. However, the DoD Component may withhold from such requester privacy-related information about another individual within the requester's Privacy Act file. When this is the case, the DoD Component will advise the first-party requester that information was withheld because "a portion of the record you requested contains privacy-related information about a party other than yourself."

b. Requesters seeking records about themselves not in a Privacy Act system of records who cite or imply the Privacy Act will have their requests processed pursuant to the FOIA, since the Privacy Act does not apply to these records. Appeals must be processed pursuant to the FOIA.

c. Requesters seeking records about themselves in a Privacy Act system of records and outside a Privacy Act system of records will have their requests processed pursuant to both the Privacy Act and the FOIA.

d. DoD Components will advise first-party requesters in the final response letter which Privacy Act and FOIA statutory authorities were used, inclusive of appeal rights.

3.10. USE OF CONTRACTORS IN FOIA ADMINISTRATION. 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 use contract support for certain functions known as "inherently governmental activities" (e.g., "governmental FOIA functions").

a. Inherently governmental FOIA functions include:

- (1) Formulating or approving FOIA policies and procedures.
- (2) Making final determinations regarding whether to treat an incoming correspondence as a FOIA or Privacy Act 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 a final review of all outgoing final determination correspondence, memoranda, 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 the DoD, any DoD Components, or any other federal agencies. Contractors may prepare and execute documents describing their own actions while processing FOIA requests.

b. Office of Federal Procurement Policy Letter 11-01 identifies the preparation of responses to FOIA requests as a function closely associated with inherently governmental functions. Examples of FOIA functions and duties that contractors may perform in the preparation of responses to FOIA requests include, but are not limited to:

(1) Making redactions to documents under the direction of an initial denial authority (IDA).

(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 DoD Component's FOIA tracking system.

3.11. NON-RESPONSIVE INFORMATION. It is not uncommon for a DoD Component, when processing records in response to a FOIA request, to locate records that deal with multiple subjects, and only one of these subjects pertain to the FOIA request. In most of these cases the DoD Components should release non-responsive information that is not exempt from the FOIA. However, if it is determined that processing the non-responsive information may cause a burden to the DoD Component or is not in the best interests of the FOIA requester, the DoD Component will consult with the FOIA requester and seek their concurrence to the redaction of the non-responsive information without a FOIA exemption. If the FOIA requester agrees, the responsive record will contain the annotation "non-responsive" at this redaction, and this concurrence will be documented in the response letter. For further information, consult the Department of Justice guidance on this topic at <https://www.justice.gov/oip/blog/foia-update-oip-guidance-determining-scope-foia-request>

3.12. HONORING FORM OR FORMAT REQUESTS.

a. The DoD Components will make reasonable efforts to:

(1) 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.

- (2) Provide records in a form that is reasonably usable.
- (3) Maintain records in forms and formats that are reproducible.

b. A record is not considered readily reproducible if the DoD Component does not have the reproduction capability or if significant resources must be expended to reproduce it into the requested format. In responding to FOIA requests for records, the DoD Components 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 DoD Components will make such determinations on a case-by-case basis.

3.13. FOIA ANNUAL REPORT. The DoD FOIA Annual Report to the United States Attorney General and the Director of Office of Government Information Services is mandated by Section (e)(1) of the FOIA and completed on a fiscal-year basis. Due to the magnitude of the requested statistics and the need for accuracy, the DoD FOIA Program Components will track the annual report data as FOIA requests are processed. This facilitates accurate compilation of the statistics in completing the report. Each September, the DO&C provides instructions to the DoD FOIA Program Components concerning Component input for the annual report. Using the current edition of DD Form 2564, "Annual Freedom of Information Act Report," the DoD Components will forward their reports to the DO&C no later than October 31. In turn, the DO&C submits a consolidated report to the Attorney General by February 1 of each year, and places a copy of this report in the FOIA section of the DoD Open Government Website.

3.13.1 (Added)(AF) FOIA Managers (through MAJCOM FOIA RSC) and AFLOA/JACL must validate and consolidate the report for the fiscal year on DD Form 2564, Annual Report Freedom of Information Act in eFOIA, and send to SAF/CIO A6XA by 15 October via e-mail. AFLOA/JACL will prepare the appeals and litigation costs sections of the report. SAF/CIO A6XA will submit a consolidated report to the DO&C and make the AF report available on the AF FOIA website. (T-1).

3.14. SIGNIFICANT FOIA REQUESTS. DoD FOIA Program Components receiving a FOIA request for records, the release of which may be of interest to DoD leadership, will contact DO&C for further guidance. DO&C will coordinate expeditiously the responses with DoD leadership; however, it will not act as the IDA for any denial of information.

3.15. (Added)(AF) A significant FOIA request is one where, in the Component's judgment, the subject matter of the request/any releasable documents is or may generate media interest and/or may be of interest or potential interest to DoD senior leadership for other reasons, (i.e., a FOIA request involving a sexual assault, actions or conduct of Secretary of Air Force, Chief of Staff, etc.). Any requests involving the current administration, previous administrations, Members of Congress (correspondence, travel, or otherwise), or conduct of current or previous DoD senior leadership (Secretary), will always be considered a potentially significant FOIA request for which SAF/CIO A6XA is notified.

3.15.1. (Added)(AF) FOIA RSC will inform SAF/CIO A6XA immediately (through MAJCOM FOIA RSC) upon receipt of any significant FOIA request(s) received by the FOIA RSC. Upon notification, SAF/CIO A6XA will determine whether HQ USAF and/or DoD/SAF-PA review is necessary prior to any release determination by the servicing IDA. If the package requires coordination, the FOIA RSC must send a copy of the proposed final release letter, a copy of the releasable documents (redacted), and a copy of the request letter. Note, the case is not to be placed on hold at any time during the coordination process and FOIA Managers must not release the records until SAF/CIO A6XA informs that the case has been cleared for release. (T-1).

SECTION 4: FOIA LIBRARIES

4.1. REQUIREMENTS.

a. General. The FOIA requires agency records described in Section (a)(2) of the FOIA and created on or after November 1, 1996, to be available for public inspection in an electronic format. To meet this requirement, each DoD FOIA Program Component will maintain an online FOIA library. In addition to these records, the DoD FOIA Program Components may elect to place other agency records of public interest in their FOIA libraries.

b. DoD FOIA Program Component FOIA Libraries. Each DoD Component will establish one or more FOIA libraries. The DoD Components that have only one FOIA RSC will meet this requirement by having a FOIA library on its FOIA website. The DoD Components with more than one FOIA RSC will meet this requirement by either having one FOIA library on its primary FOIA website or having a FOIA library on each FOIA RSC website.

(1) **Final Opinions.** Section (a)(2)(A) of the FOIA requires agencies to make final opinions available to the public. This requirement can be met by the public availability of DoD Component websites such as the Defense Office of Hearings and Appeals and Armed Services Board of Contract Appeals. DoD FOIA Program Components are not required to also post or link to these otherwise publically available documents in their FOIA libraries.

(2) **Statements of Policy.** Section (a)(2)(B) of the FOIA requires agencies to make statements of policy and interpretations that have been adopted by the agencies and are not published in the Federal Register available to the public. This requirement can be met by the publication of DoD issuances on the DoD Issuances Website. DoD FOIA Program Components are not required to post or link to these documents in their FOIA libraries.

(3) **Administrative Staff Manuals or Instructions.** Section (a)(2)(C) of the FOIA requires agencies to make administrative staff manuals and instructions that establish policy or interpretations that affect the public available to the public. Each DoD FOIA Program Component FOIA library must link to its respective Component's publicly available issuance publication web page. For example, the Air Force FOIA Website will link to the Air Force e-Publishing Website, and the OSD/Joint Staff FOIA RSC will link to the DoD Issuances Website.

(4) Frequently Requested Records.

(a) Each FOIA Program DoD Component FOIA library must meet the requirements of Section (a)(2)(D) of the FOIA by making available to the public records that:

1. Have been released under the FOIA; and
2. Are or are likely to become the subject of subsequent FOIA requests; or
3. Have been requested three or more times.

(b) These types of documents will not be posted in FOIA Libraries.

1. Documents requested by a person that would be exempt from release to any other requester pursuant to Exemptions 6 or 7(C) because they contain personally identifiable information about the requester. This commonly occurs when a requester makes a first party request for their own information; however, it could arise in other situations.

2. Documents requested by a commercial entity that would be exempt from release to any other requester pursuant to Exemption 4 because they contain trade secrets or commercial or financial information concerning the requester.

(5) **Index.** Section (a)(2)(E) of the FOIA requires the libraries to provide an index of the documents posted in accordance with Section (a)(2)(D). DoD FOIA Program Components can meet this requirement by arranging these documents in their FOIA libraries by topical or descriptive words, rather than by case name or numbering system, so that the public can readily locate material. Case name and numbering arrangements may also be included for DoD FOIA Program Component convenience.

(6) **Proactive Releases.** DoD FOIA Program Components may post other documents in their FOIA libraries, such as proactive releases, documents released in accordance with the Mandatory Declassification Review program, and other documents released in accordance with the FOIA. This section also may contain links to other DoD FOIA Program Component offices proactively releasing documents. DoD Components must not proactively release documents that are contained within a Privacy Act system of records unless the published system of records notice specifically allows for proactive releases in the routine uses section.

c. Exemptions. DoD FOIA Program Components will redact from all records in FOIA libraries all information that qualifies for withholding pursuant to one or more of the FOIA exemptions described in Section 5.

d. (Add)(AF) SAF/CIO A6XA will make the traditional (a)(2) materials (Title 5 U.S.C. 552(a)(2)(A), (B), (C) and (D)) available to the public on the Air Force FOIA Library website. Each FOIA RSC must make Title 5 U.S.C. 552(a)(2)(D) records available to the public in a Library by sending it to SAF/CIO A6XA for posting via eFOIA. (T-1). SAF/CIO A6XA will determine whether or not the release records are qualified for posting to the Air Force FOIA Library website.

e. (Add)(AF) FOIA RSCs will consider any requested record that has been previously partially or fully released as a frequently requested record (FOIA - processed (a)(2)(D) record) and make it publicly available electronically as outlined in paragraph 4.1.b.(4). (T-1). Posted records must be redacted in a manner where anyone in the world may have access to that record except for senior official (above the O-6 grade or civilian equivalent) investigative Inspector General report that were substantiated against the senior official. (T-1). FOIA records requested only by a first party requester for their own Privacy Act records will NOT be posted to the Library. (T-0).

4.2. RECORD AVAILABILITY. The DoD FOIA Program Components should consider enhancing their FOIA libraries with search engines and document categories to provide the public easier access.

4.3. INDEXES. Sections (g)(1) and (2) of the FOIA require agencies to make available for public inspection in an electronic format an index of all major information systems and a description of major information and record locator systems publicly available.

a. Major Information System. The FOIA section of the DoD Open Government Website satisfies this requirement for the DoD. The DoD FOIA Program Components are not required to post or link to this index in their FOIA libraries.

b. Record Locator System. The FOIA section of the DoD Open Government Website satisfies this requirement for the DoD. The FOIA Program DoD Components are not required to post or link to this index in their FOIA libraries.

4.4. FOIA SECTION (A)(1) RECORDS.

a. Although FOIA Section (a)(1) records need not be made available in response to FOIA requests or in FOIA libraries, they must be made publicly available. Examples of (a)(1) records include:

(1) Descriptions of an agency's central and field organization and, to the extent they affect the public, rules of procedure.

(2) Descriptions of forms available.

(3) Instructions as to the scope and contents of papers, reports, or examinations.

(4) Any amendments, revisions, or reports of the aforementioned records.

b. In accordance with Section (a)(1) of the FOIA, each DoD Component will disclose, through publication in the Federal Register, information describing its organization, functions, procedures, substantive rules, and statements of general policy.

c. **(Added)(AF) SAF/CIO A6XA makes the appropriate (a)(1) materials available for the Air Force.**

SECTION 5: EXEMPTIONS

5.1. GENERAL PROVISIONS.

a. This section is not a thorough or exhaustive explanation of the applicability of the FOIA exemptions. For more detailed explanations, the DoD Components may consult the Department of Justice Guide to the Freedom of Information Act (available at <http://www.usdoj.gov/oip/foia-guide.html>).

b. Information responsive to a FOIA request will be withheld only if the DoD Component reasonably foresees that disclosure would harm an interest protected by one or more of the FOIA exemptions, or disclosure is prohibited by law. Under this standard, the content of a particular record should be reviewed and a determination made as to whether the DoD Component reasonably foresees that disclosing it, 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 an insufficient basis for withholding information.

c. As described in this section, nine types of exempt information in records may be withheld, in whole or in part, from public disclosure unless otherwise prescribed by law. In general, a release of a record to one FOIA requester prevents the withholding of the same record pursuant to a FOIA exemption if the record is later requested by someone else.

d. In applying exemptions, the identity of the FOIA requester and the purpose for the FOIA request are irrelevant; however, an exemption may not be invoked when the particular interest to be protected is the FOIA requester's interest. For example, privacy information concerning an individual would not be withheld from that individual if they were to request it under the FOIA unless another FOIA exemption applies.

e. When a DoD Component determines that information contained within a record is exempt from release, it will consider whether a partial release of the record is possible by taking reasonable steps to conduct a line-by-line review to segregate and release nonexempt information contained within the record.

f. If admitting the fact of the existence or nonexistence of a record responsive to a FOIA request would itself reveal information protected from release by one of the nine exemptions, the DoD Components must neither confirm nor deny the existence or nonexistence of the requested record.

(1) This is commonly called a "Glomar" response (for detailed guidance on using this type of response, see the Department of Justice Guide to the Freedom of Information Act), and the appropriate exemption must be cited by the DoD Component in the response. This situation most commonly arises with Exemptions 1, 6, and 7(C); however, it could arise with other exemptions.

(2) A "refusal to confirm or deny" response must be used consistently by the DoD Components, not only when a record exists, but also when a record does not exist. If not used

consistently, the pattern of a “no record” response when a record does not exist, and a “refusal to confirm or deny” when a record does exist, risks disclosing exempt information.

5.2. APPLYING THE FOIA EXEMPTIONS. This paragraph describes the nine types of exempt information in records and the procedures for applying them.

a. Exemption 1. Pursuant to section (b)(1) of the FOIA, records properly and currently classified in the interest of national defense or foreign policy, pursuant to an existing Executive order, are exempt from disclosure. If the responsive information is not marked as classified when the FOIA request is submitted, the DoD Component may undertake a classification review in accordance with Volume 1 of DoDM 5200.01 to determine whether the information should be classified. The FOIA requester will be advised as to which sections of an Executive order apply in determining that the information is classified. Exemption 1 also is invoked when:

(1) Individual items of unclassified information, when compiled, reveal additional associations or relationships that meet the standard for classification pursuant to an existing Executive order and Volume 1 of DoDM 5200.01, and are not otherwise revealed in the individual items of information. This is known as the “mosaic” or “compilation” approach.

(2) The fact of the existence or nonexistence of a responsive record would itself reveal information containing classified information. In this situation, the DoD Components must provide a Glomar response and cite Exemption 1.

(3) (Add)(AF) No FOIA classified release decision should be made without the FOIA package containing the recommendation/ decision on declassification of the requested classified record completed by proper Air Force authority. Prior to forwarding to the FOIA IDA for a final release decision, declassification reviews of FOIA requested classified documents will follow the procedures in AFI 16-1404, *Air Force Information Security Program* and DoDM 5200.01, *DoD Information Security Program*, as well other applicable regulation. Further, AFI 16-1404, paragraph 3.5.3., states that if an Air Force organization that was responsible for classifying an historical document no longer exists, the organization that inherited the function of the originating organization will determine appropriate declassification action. If the functions of the originating organization were dispersed to more than one organization, it cannot be determined which organization should inherit the function, or the organizations ceased to exist, the Air Force Declassification Office works with the Senior Agency Official (SAF/AA) to determine the declassification action to be taken. (T-1).

b. Exemption 2. Pursuant to section (b)(2) of the FOIA, records related solely to the internal personnel rules and practices of the DoD or any of the DoD Components are exempt from disclosure.

c. Exemption 3. Pursuant to section (b)(3) of the FOIA, records concerning matters that another statute specifically establishes criteria for withholding are exempt from disclosure.

(1) This exemption allows for the withholding of information because its release is prohibited by another statute only if one of two disjunctive requirements concerning the statute is met:

(a) The statute requires that the information be withheld from the public in such a manner as to leave no discretion on the issue; or

(b) The statute establishes particular criteria for withholding or refers to particular types of matters to be withheld.

(2) For any statute enacted after October 28, 2009, in order to qualify as an Exemption 3 statute under this paragraph, it must cite to section (b)(3) of the FOIA. The DO&C maintains a list of Exemption 3 information and statutes used within the DoD on the FOIA section of the DoD Open Government Website, including, but not limited to:

(a) **Personally Identifying Information of DoD Personnel.** Section 130b of Title 10, U.S.C., authorizes the withholding of names, ranks, duty addresses, official titles, and pay information of DoD personnel (civilian and military) in overseas, sensitive, or routinely deployable units when this information is requested pursuant to the FOIA. The United States Special Operations Command and the United States Cyber Command and their components qualify as sensitive units pursuant to Section 130b of Title 10, U.S.C. Information withheld pursuant to Exemption 3 and this statute also should be withheld pursuant to Exemption 6.

1. The DoD Components may make discretionary releases of names and duty information of personnel in overseas, sensitive, or routinely deployable units who, by the nature of their position and duties, frequently interact with the public. Officials whose identities may be released include general and flag officers, public affairs officers, other personnel designated as official command spokespersons, and other senior officials whose identities are known to the public through the performance of their duties.

(a) (Added)(AF) Each Air Force installation will establish a system and assign an OPR to identify United States-based units qualifying for the “sensitive or routinely deployable unit” designation, under this exemption. Appropriate OPR could include directors of operations, plans and programs, and personnel. (T-1).

(b) (Added)(AF) FOIA Managers will ensure the list of sensitive and routinely deployable units is reviewed in January and July, and validate the current list or provide a revised listing based on the current status of deployed units at that time to SAF/CIO A6XA through MAJCOM FOIA RSC. FOIA RSC will use it to determine the units to which 10 U.S.C. 130b applies for the purpose of asserting Exemption 3. (T-1).

2. The provision in Paragraph 5.2.c.(2)(a), does not change DoD issuances for public affairs officers and the rules used by public affairs offices to release information to the general public and the media. Public affairs offices should continue to release information in accordance with current DoD issuances, Privacy Act restrictions, and security classifications.

(b) **Sensitive Information of Foreign Governments and International Organizations.** Section 130c of Title 10, U.S.C., authorizes the withholding of unclassified sensitive information of a foreign government or international organization (e.g., the North Atlantic Treaty Organization, the United Nations, the North American Aerospace Defense Command, the Inter-American Defense Board, or the International Committee of the Red Cross). DoD Component

IDAs must withhold this information pursuant to Exemption 3 (for procedural instructions, see Paragraph 6.2.f.(2)) when they make all three of these determinations concerning the requested information:

1. The information was provided to the DoD by (or produced in cooperation with) a foreign government or international organization.

2. The information is withheld from public disclosure by the foreign government or international organization and the foreign government or international organization has made this representation in writing.

3. Any of these three conditions are met:

a. The foreign government or international organization requests, in writing, that the information be withheld.

b. The foreign government or international organization provides the information to the U.S. Government on the condition that it is not released to the public.

c. DoD regulations specify the release of the requested information would have an adverse effect on the ability of the U.S. Government to obtain the same or similar information in the future.

(c) Critical Infrastructure Security Information (CISI). In accordance with Section 130e of Title 10, U.S.C., the Secretary of Defense and the Director of Administration (DA), Office of the Deputy Chief Management Officer, may exempt CISI from release under the FOIA. The s asserting the exemption must obtain a written determination from the DA in accordance with the procedures in Paragraph 6.2.j. before withholding CISI from a FOIA requester. If the IDA asserting the exemption is from a consulted DoD Component, that DoD Component must obtain the written DA determination before responding to an closing the consultation.

(d) Military Flight Operations Quality Assurance (MFOQA) System Data File. In accordance with Section 2254a of Title 10, U.S.C., the Secretary of Defense and the DA may exempt MFOQA system data files from release under the FOIA. The IDAs asserting the exemption must obtain a written determination from the DA in accordance with the procedures in Paragraph 6.2.j. before withholding MFOQA system data file information from a FOIA requester.

d. Exemption 4. Pursuant to Section (b)(4) of the FOIA, certain non-government financial information is exempt from disclosure.

(1) This exemption protects:

(a) Trade secrets; or

(b) Information that is:

1. Commercial or financial;

2. Obtained from a person or entity outside of the U.S. Government; and
3. Privileged or confidential.

(2) Commercial or financial information that is voluntarily submitted to the U.S. Government, absent any exercised authority prescribing criteria for submission, may be categorically protected, provided it is not customarily disclosed to the public by the submitter. Examples of exercised authorities prescribing criteria for submission include statutes, Executive orders, regulations, invitations for bids, requests for proposals, and contracts. DoD Components should analyze submission of information pursuant to these authorities in accordance with Part 286 of Title 32, CFR.

(3) Commercial or financial information that is not voluntarily provided to the U.S. Government is considered “confidential” for Exemption 4 if its disclosure is likely to:

- (a) Impair the U.S. Government’s ability to obtain necessary information in the future (known as the “impairment prong”);
- (b) Harm an identifiable private or governmental interest; or
- (c) Cause substantial harm to the competitive position of the person providing the information.

(4) Examples of information that may be protected by Exemption 4 include:

- (a) Commercial or financial information received in connection with loans, bids, contracts, or proposals.
- (b) Statistical data and commercial or financial information concerning contract performance, income, profits, losses, and expenditures.
- (c) Personal statements given during inspections, investigations, or audits.
- (d) Financial data provided by private employers in connection with locality wage surveys that are used to fix and adjust pay schedules applicable to the prevailing wage rate of DoD employees.
- (e) Scientific and manufacturing processes or developments concerning technical or scientific data or other information submitted with applications for research grants or with a report while research is in progress.
- (f) Technical or scientific data developed by a contractor or subcontractor exclusively at private expense, or developed in part with federal funds and in part at private expense. The contractor or subcontractor must retain legitimate proprietary interests in such data, in accordance with Sections 2320 and 2321 of Title 10, U.S.C., and Parts 227.71 and 227.72 of Title 48, CFR. Technical data developed exclusively with federal funds may be withheld pursuant to Exemption 3 if it meets the criteria of Section 130 of Title 10, U.S.C., and Parts 227.71 and 227.72 of Title 48, CFR.

(g) Information copyrighted pursuant to Section 106 of Title 17, U.S.C., if release of copyrighted material otherwise meets the standards of Exemption 4.

(5) When the DoD Components receive FOIA requests for information that could be protected by this exemption, they will notify the submitter of the information in accordance with the procedures in Subpart 286.10 of Title 32, CFR.

e. Exemption 5. Pursuant to Section (b)(5) of the FOIA, inter- or intra-agency memoranda or letters containing information considered privileged in civil litigation are exempt from disclosure. Merely being an internal record is an insufficient basis for withholding pursuant to this exemption. To qualify as exempt pursuant to Exemption 5, the document must meet a particular threshold and must be privileged in the civil discovery context.

(1) **Threshold.** A document must meet the threshold requirement of being an inter- or intra-agency document before the proper privilege can be identified in any given case. Because the U.S. Government may seek expert advice from external entities (or consultants) in many instances, it is possible that an external entity may qualify as an “agency” for this exemption. See the Department of Justice Guide to the Freedom of Information Act for further discussion on this subject.

(2) **Privileges.** The privileges and types of information protected by Exemption 5 include, but are not limited to:

(a) **Deliberative Process Privilege.**

1. To qualify for this privilege, the information must be deliberative and pre-decisional. DoD Components cannot withhold factual information from a FOIA requester pursuant to this privilege, except when:

a. The author of a document deliberately selects specific facts out of a larger group of facts and uses only this subset of facts to make a decision, thereby revealing the author’s internal thought processes; or

b. The factual information is so inextricably connected to the deliberative material that its disclosure would expose or cause harm to the agency’s deliberations.

2. A direction or order from a superior to a subordinate usually does not qualify as a deliberative process document if it constitutes guidance on a departmental policy or a decision. However, correspondence from a superior to a subordinate may qualify if it discusses preliminary matters or requests information or advice relied upon in the decision-making process.

3. An agency’s final decision and post-decisional documents related to the decision cannot be withheld pursuant to the deliberative process privilege.

4. Examples of deliberative process documents include:

- a. Staff papers, including after-action reports, inspection reports, lessons learned, and situation reports containing staff evaluations, advice, opinions, or suggestions.
- b. Advice, suggestions, or evaluations prepared on behalf of the DoD by individual consultants or by internal boards, committees, councils, groups, panels, conferences, commissions, task forces, or other similar groups that are formed for obtaining advice and recommendations.
- c. Drafts of final records.
- d. Information of a speculative, tentative, or evaluative nature, or such matters as proposed plans to procure, lease, or otherwise acquire and dispose of materials, real estate, facilities, or functions, when such information would provide undue or unfair competitive advantage to private personal interests or would impede legitimate U.S. Government functions.
- e. Agency documents underlying the President's budget decisions, as described in Office of Management and Budget Circular No. A-11. This includes planning, programming, and budgetary information that is involved in the defense planning and resource allocation process and out-year discretionary data.

5. The deliberative process privilege does not apply to records created 25 years or more prior to the date of the FOIA request.

(b) **Attorney-Client Privilege.** This privilege protects confidential communications between an attorney and a client (or multiple clients that share a common interest) relating to legal matters for which the client has sought professional advice. The information that the client supplies to the attorney, the legal advice that the attorney gives to the client in return, and communications between attorneys that involve client-supplied information are protected by this privilege. Unlike the deliberative process privilege, the attorney-client privilege mandates the withholding of all the information, including the facts, unless the client waives the privilege.

(c) **Attorney Work Product Privilege.** This privilege protects documents prepared by an attorney or at an attorney's direction in reasonable anticipation of litigation. Unlike the deliberative process privilege, the attorney work product privilege mandates the withholding of all the information, including the facts. This privilege still can be used after the litigation is complete.

(d) **Government Trade Secret Privilege.** This privilege protects trade secrets or other confidential research, development, or commercial information owned by the U.S. Government, premature release of which is likely to affect the U.S. Government's negotiating position or other commercial interest.

(e) **Safety Investigation Privilege.** This privilege protects privileged safety information, as defined in DoDI 6055.07.

(f) **Presidential Communications Privilege.** This privilege protects communications among the President and Presidential advisors created to assist the President in the exercise of non-delegable constitutional duties.

f. Exemption 6. Pursuant to Section (b)(6) of the FOIA, information in personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, is exempt from disclosure. If the information qualifies as Exemption 6 information, there is no discretion in its release.

(1) When considering applying this exemption, the DoD Component must balance the public interest in disclosure against the individual's privacy interest. When there is no public interest in the requested information, the DoD Component may withhold the information even if there is only a negligible privacy interest. In determining the public interest, the DoD Component should only consider whether the information sheds light on the operations or activities of the U.S. Government. The FOIA requester has the burden of showing a public interest in disclosure.

(2) A privacy interest may exist in personal information even though the information was previously disclosed but may no longer be in the public's eye and has faded from memory. This is known as the concept of "practical obscurity." In this case, the privacy interest in this type of situation may have increased over time and the public interest may have decreased over time; therefore, the DoD Component should now withhold the once-public information, if the balance of interests has shifted in favor of privacy.

(3) This exemption usually protects home addresses, telephone numbers, and private e-mail addresses. This includes home addresses and military quarters addresses not associated with the occupants' names.

(4) This exemption must not be used in an attempt to protect the privacy of a deceased person. It may be used to protect the privacy of the deceased person's surviving family members if disclosure would rekindle grief, anguish, pain, embarrassment, or result in a disruption of their peace of mind.

(5) This exemption also applies when the fact of the existence or nonexistence of a responsive record would itself reveal information containing a privacy interest, and the public interest in disclosure does not outweigh the privacy interest. In this situation, the DoD Components must provide a Glomar response and cite Exemption 6.

(6) If a FOIA requester requests information that is about that FOIA requester, Exemption 6 may not be used to deny privacy information about that individual. However, if another FOIA requester requests the same information, it should be denied under Exemption 6.

g. Exemption 7. Pursuant to Section (b)(7) of the FOIA, records or information compiled for law enforcement purposes are exempt from disclosure upon the identification of one of the six conditions delineated in this paragraph. Law enforcement purposes include civil, criminal, military, and regulatory/administrative purposes, including the implementation of Executive orders or regulations issued pursuant to law. A DoD Component may invoke this exemption to prevent disclosure of documents not originally created, but later gathered, for law enforcement purposes.

(1) **Conditions Where Exemption 7 Applies.**

(a) **Exemption 7(A)**. Section (b)(7)(A) of the FOIA applies to records compiled for law enforcement purposes when disclosure could reasonably be expected to interfere with enforcement proceedings. Determining the applicability of Exemption 7(A) requires a two-step analysis.

1. DoD Components must identify an ongoing, pending, or prospective law enforcement proceeding. This would include any subsequent or pending proceedings resulting from the original proceeding. This exemption cannot be used if an investigation is terminated or complete.

2. DoD Components must determine whether release of the information could cause some articulable harm to the law enforcement proceeding. In order to satisfy the “articulable harm” requirement of Exemption 7(A), there must be some distinct harm that could reasonably be expected to result if the record or information requested were disclosed.

(b) **Exemption 7(B)**. Section (b)(7)(B) of the FOIA applies to records compiled for law enforcement purposes when disclosure would deprive a person of the right to a fair trial or to an impartial adjudication.

(c) **Exemption 7(C)**. Section (b)(7)(C) of the FOIA applies to records compiled for law enforcement purposes when disclosure could reasonably be expected to constitute an unwarranted invasion of the personal privacy of a living person, including surviving family members of an individual identified in such a record. This exemption also applies when the fact of the existence or nonexistence of a responsive record would itself reveal information containing a privacy interest, and the public interest in disclosure does not outweigh the privacy interest. In this situation, the DoD Components must provide a Glomar response and cite Exemption 6.

(d) **Exemption 7(D)**. Section (b)(7)(D) of the FOIA applies to records compiled for law enforcement purposes when disclosure could reasonably be expected to disclose:

1. The identity of a confidential source, including:

a. A source within the DoD;

b. A State, local, or foreign agency or authority; or

c. Any private institution that furnishes the information on a confidential basis.

2. Information furnished from a confidential source and obtained by a criminal law enforcement authority in a criminal investigation or by an agency conducting a lawful national security intelligence investigation.

(e) **Exemption 7(E)**. Section (b)(7)(E) of the FOIA applies to records compiled for law enforcement purposes when disclosure would reveal:

1. Non-obvious techniques and procedures for law enforcement investigations or prosecutions; or

2. Guidelines for law enforcement investigations or prosecutions, if such disclosure could reasonably be expected to risk circumvention of the law.

(f) **Exemption 7(F).** Section (b)(7)(F) of the FOIA applies to records compiled for law enforcement purposes when disclosure could reasonably be expected to endanger the life or physical safety of any individual.

(2) **Examples of Exemption 7 Applications.**

(a) Statements of witnesses and other material developed during the course of an investigation and all materials prepared in connection with related government litigation or adjudicative proceedings may be exempt from disclosure pursuant to Exemptions 7(A), 7(C), and 7(D).

(b) The identity of firms or individuals being investigated for alleged irregularities in contracting with the DoD, when the United States has obtained no indictment or filed any civil action against them, may be exempt from disclosure pursuant to Exemptions 7(A) and 7(C).

(c) Information obtained in confidence, expressed or implied, during a criminal investigation by a criminal law enforcement activity or a lawful national security intelligence investigation may be exempt from disclosure pursuant to Exemptions 7(A), 7(C), and 7(D). National security intelligence investigations include background security investigations and those investigations conducted to obtain affirmative or counterintelligence information.

(d) Emergency action plans, guidelines for response to terrorist attacks, analyses of security procedures, and other sensitive information that could prove deadly if obtained by those seeking to do harm to the public on a large scale may be exempt from disclosure pursuant to Exemptions 7(E) and 7(F).

h. Exemption 8. Pursuant to Section (b)(8) of the FOIA, records in or related to examination, operation, or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions are exempt from disclosure.

i. Exemption 9. Pursuant to Section (b)(9) of the FOIA, records containing geological and geophysical information and data (including maps) concerning wells are exempt from disclosure.

SECTION 6: FOIA REQUEST PROCESSING

6.1. GENERAL PROVISIONS.

a. Requests From Private Parties. A FOIA request may be made by any person. It may not be used by federal agencies seeking official information.

b. Requests From Local or State Government Officials, Congress, and Foreign Governments.

(1) Local or State government officials, foreign officials requesting on behalf of their governments, foreign individuals, or foreign organizations requesting DoD Component records pursuant to the FOIA are treated the same as any other FOIA requester.

(2) The FOIA does not apply to the records of a DoD Component that is an element of the intelligence community, as defined in Section 401a(4) of Title 50, U.S.C., if the FOIA request is from an entity or representative of a foreign government.

(3) 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, are not FOIA requests and should not be processed through FOIA channels. However, any release of information will be consistent with a release to any individual pursuant to the FOIA and its withholding exemptions. In these cases, the member will not be provided with FOIA appeal rights.

(4) 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 a FOIA RSC are referred to the appropriate office that handles legislative inquiries for processing pursuant to DoDI 5400.04 or supplementing DoD Component issuances. Such requests are not processed pursuant to the FOIA and withholding exemptions may not apply.

(5) If a member of Congress chooses to request records pursuant to the FOIA, then the provisions of Part 286 of Title 32, CFR, and this issuance apply.

(6) Constituent requests for records that are forwarded by members of Congress are processed as FOIA or Privacy Act requests, as applicable. The member forwarding the request will be advised of these circumstances.

(7) Requests from officials of foreign governments that do not invoke the FOIA are referred by the FOIA RSC to the appropriate office authorized to disclose official DoD information to foreign governments, and the requester is so notified.

(8) (Added)(AF) Requests for records from individual members of Congress are not normally processed formally under the FOIA (i.e., assigned a FOIA number with subsequent appeal rights), but are responded to by applying FOIA procedures consistent with this Manual and AFI 90-401, *Air Force Relations With Congress*.

(9) (Added)(AF) Air Force-affiliated requesters, to include military and civilian employees, do not use government equipment, supplies, stationery, postage, telephones, or official mail channels to make FOIA requests. Doing so creates confusion as to whether or not the request is a personal FOIA request or a functional request. Requests made by an organization or business must provide a name of their representative when submitting a request. (T-1).

(10) (Added)(AF) Requests that do not cite the FOIA are also known as “functional” requests. Air Force elements may receive requests for government information or records from the public that do not refer to the FOIA. Often these requests are sent to a Public Affairs Office (PAO), legislative affairs or a specific unit by the media. All releases of information from Air Force records to the public, whether the requester cites the FOIA or not, must comply with the principles of the FOIA exemptions. When responding to requests that do not refer to the FOIA, if the responding element fully or partially denies the release of information from Air Force records, inform the requester of the basis for the denial of information but do not formally assert FOIA exemptions. For example, if redacting personal information, state that information of individuals is redacted to protect personal information that, if released, would constitute a clearly unwarranted invasion of personal privacy. In the event the requester asks about how to contest the withholding of the information, advise the person that a formal FOIA request can be filed through the appropriate FOIA RSC. (T-1).

(11) (Added)(AF) FOIA Managers are highly recommended to inform the requester of the option to accept “clearly releasable” records and define its meaning. Explain to the requester any information that will be withheld in compliance with the principles of the FOIA exemptions in order to expedite processing. Document if a requester states they will accept “clearly releasable” records. The response letter should inform the requester the basis for the denial of information but do not formally assert FOIA exemptions. For example, if redacting personal information, state that information of individuals is redacted to protect personal information that, if released, would constitute a clearly unwarranted invasion of personal privacy. The redacted portions of responsive documents are removed without listing the exemption codes. This process does not require IDA approval or legal review and will be considered a full release. In the event the requester asks about how to contest the withholding of the information, remind the requester in writing of their appeal rights.

6.2. PROCESSING PROCEDURES.

a. Receipt and Control.

(1) When a FOIA RSC receives a FOIA request, it must open a file in a formal control system. The formal control system:

- (a) Must be designed for accountability and compliance with the FOIA.
- (b) Should include the data elements necessary to compile the statistics required by the annual report.

(2) Each request must be assigned a unique tracking number, which will be included in all correspondence with the requester.

(3) (Added) (AF) The Air Force has implemented an electronic FOIA tracking tool, called AF eFOIA. In addition, an AF eFOIA Public Access Link (PAL) has also been established for submission of request to FOIA RSC at <https://www.foia.af.mil/palMain.aspx>.

(4) (Added)(AF) Examples of letters to FOIA requesters (e.g., response determinations and interim responses) are included in Appendix 1.

(5) (Added)(AF) Refer to the Air Force Records Disposition Schedule located at <https://www.my.af.mil/afrims/afrims/afrims/rims.cfm> The general public may also see a copy of the AF Records Disposition Schedule at <http://www.af.mil/information/index.asp> under —Forms and Publications. The functional OPR or FOIA RSC may keep the records released or denied. The FOIA RSC keeps the FOIA administrative file for each request in eFOIA (starting FY10). The FOIA administrative file consists of: the initial request; tasking to OPR that reply (unredacted and redacted responsive records); memoranda for record of phone calls or other actions related to the FOIA request; DD Forms 2086, Record of Freedom of Information Processing Cost, or 2086-1, Record of Freedom of Information Processing Cost for Technical Data; final response; and any of the following, if applicable: extension letter; legal opinions; submitter notification letters and replies; the appeal and required attachments (except for the released or denied records if maintained by the OPR) and all other correspondence to and from the requester and OPR.

b. Prompt Action on FOIA Requests.

(1) When unusual or exceptional circumstances prevent a FOIA RSC from making a final response determination within the statutory time period, it will advise the FOIA requester in writing and provide the requester an opportunity to narrow the scope of the request. FOIA RSCs will be available, as a matter of good practice, to assist requesters in the formulating of requests.

(a) The FOIA describes unusual circumstances as:

1. The need to search for and collect the requested records responsive from field offices or other establishments that are separate from the office processing the FOIA request.

2. The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records.

3. The need for consultation, which will be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more DoD Components having substantial subject-matter interest in the records.

(b) The FOIA does not affirmatively explain “exceptional circumstances;” however, exceptional circumstances do not include a delay that results from predictable component

backlogs, unless the DoD FOIA Program Component demonstrates reasonable progress in reducing its backlog.

(2) DoD Components receiving a misdirected FOIA request will follow the procedures in Subpart 286.7 of Title 32, CFR.

(3) DoD FOIA Program Components will provide interim responses when they are unable to make a final determination within the statutory 20 working days, and should communicate with the FOIA requester before the final response, if appropriate. These communications may include acknowledging receipt of the FOIA request and negotiating with the FOIA requester concerning the scope of the FOIA request, the response timeframe, and the fee agreement. However, such communications do not constitute a final response determination. The initial interim response will include, at a minimum:

- (a) The date the 20-working-day statutory time period started for the FOIA request.
- (b) The tracking number for the FOIA request.
- (c) Contact information concerning how the FOIA requester can obtain information about the processing of the FOIA request.

(4) The statutory time period to make a release determination on a FOIA request usually begins on the date when the FOIA RSC responsible for the requested records receives the FOIA request. However, if the FOIA request was originally misdirected to another FOIA RSC, the timing provisions of Subpart 286.6 of Title 32, CFR, for misdirected requests apply.

(5) The 20-working-day statutory period for responding to a FOIA request begins only when a perfected FOIA request is received. After this time, a FOIA RSC may toll the statutory time period for only two reasons. In both situations, the FOIA requester's response to the DoD Component's request ends the tolling period.

(a) The time period may be tolled one time when the FOIA RSC goes back to the FOIA requester and reasonably asks for additional information (not connected to the assessment of fees).

(b) The time period may be tolled if it is necessary for the FOIA RSC to clarify issues regarding fee assessment with the FOIA requester. There is no limit to the number of times a DoD Component may go back to a FOIA requester to clarify fee assessment issues, which sometimes may be done in stages as the records are located and processed.

(c) **Estimated Completion Date.** See Subpart 286.9 of Title 32, CFR.

(d) **Multi-Track Processing.** See Subpart 286.8 of Title 32, CFR.

(1) **(Added)(AF) Simple requests can be processed quickly with limited impact on the responding units. Simple requests clearly identifies the records with no (or few) complicating factors involved. There are few or no responsive records. Only one installation is involved and there are no outside**

OPRs. There are no classified or nongovernment records. No deliberative process/privileged materials are involved. The responsive records contain no (or limited) (or limited) personal privacy information and do not come from a Privacy Act system of records. No time extensions are anticipated.

(2) (Added)(AF) Complex requests take substantial time and cause significant impact on responding units. With complex requests, complications and delays are likely. Records sought are voluminous. Multiple organizations must review/coordinate on requested records. Records may be classified; originated with a nongovernment source; or are contractor records, etc.

e. Expedited Processing. See Subpart 286.8 of Title 32, CFR.

f. Responsive Documents Originated by a Non-government Source.

(1) **Commercial or Financial Information.** See Subpart 286.10 of Title 32, CFR.

(2) **Foreign Government or International Organization Information.** The coordination provisions of this paragraph apply to the release of responsive information received from foreign governments or international organizations.

(a) DoD Components should coordinate directly with their foreign government counterparts when processing foreign government information responsive to a FOIA request. Coordination also may be made through the Department of State or the specific foreign embassy.

(b) When the DoD Components locate North American Aerospace Defense Command documents in their files responsive to a FOIA request, they will refer the documents to the United States Northern Command FOIA RSC, which will consult with the North American Aerospace Defense Command.

(c) Coordination with most international organizations may be made directly with those organizations.

(d) When a foreign government or international organization asks the DoD to withhold classified information originating with that foreign government or international organization, it is withheld pursuant to Exemption 1 of the FOIA.

(e) If the DoD Component is asked to withhold sensitive unclassified information originated by an international organization or foreign government, then the DoD Component withholds it pursuant to Exemption 3 and references the relevant statute as Section 130c of Title 10, U.S.C. To qualify for withholding, the information must meet these criteria:

1. If the information came into the DoD's possession or control prior to October 30, 2000, and more than 25 years prior to receipt of the FOIA request, the DoD Component notifies the foreign government or international organization of the request for disclosure. The information then qualifies for withholding only if the foreign government or international organization requests in writing that the information not be disclosed for a specific

period of time. This date can be extended with a later request by the foreign government or international organization.

2. If the information came into possession or control of the DoD on or after October 30, 2000, the information cannot be withheld after the release date specified by the foreign government or international organization. When one or more foreign governments or international organizations provided the information, the latest date specified by any of them will be used. If no release date was specified, and the information came into the possession of the DoD Component more than 10 years prior to receipt of the FOIA request, the procedures set forth in Paragraph 6.2.f.(2)(e)1. apply.

g. Processing the Receipt of FOIA Fees. The Treasurer of the United States has established an account for FOIA receipts, Receipt Account 3210. When depositing the receipts, the appropriate disbursing office 2-digit prefix must precede the account number. This account will be used for depositing all FOIA receipts except for those of working capital and non-appropriated funded activities. Those activities must establish their own procedures for depositing FOIA receipts to the applicable fund. All checks or money orders remitting FOIA fees should be made payable to the U.S. Treasurer.

h. Creating a Record. To be subject to the FOIA, a record must exist and be in DoD possession and control when the DoD Component searches for it. The DoD Components are not obligated to create, compile, or answer questions to satisfy a FOIA request.

(1) However, in order to provide quality customer service, the DoD Components may compile a new record when doing so would result in a more useful response to the FOIA requester and would be less burdensome to the DoD Component than providing existing records. This could be the case when a FOIA requester wants, for example, a list of all travel locations for a single senior official. Instead of processing the large number of travel documents, the DoD Component may wish to compile a list of travel locations extracted from the documents.

(2) Prior to the creation of the document, any such compilation should be coordinated with and approved by the FOIA requester. The cost of creating or compiling such a record may not be charged to the FOIA 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 Subparts 286.12 and 286.13 of Title 32, CFR.

i. Electronic Records and Searches.

(1) **Significant Interference.** Section (a)(3)(C) of the FOIA requires DoD Components to make reasonable efforts to conduct electronic searches for responsive documents, except when the searches would cause significant interference with the operation of the DoD Components' automated information systems.

(a) If extensive monetary or personnel resources are needed to conduct an electronic search, DoD Components should take this into account when determining whether they are making reasonable efforts to search for electronic records.

(b) 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 rather than a reasonable effort.

(2) **Data Links.** The DoD Components are not required to expend DoD funds to establish data links that provide real-time or near-real-time data to a FOIA requester.

j. CISI and MFOQA Data Files. IDAs may deny CISI and MFOQA system data files from release under Exemption 3 of the FOIA after the DA has made a written determination that the information is exempt.

(1) When DoD Components have reason to believe that information responsive to a FOIA request is CISI or MFOQA system data file information, they will submit a package to the DA, through the DO&C, recommending exemption of the requested information. If the information believed to be CISI or MFOQA is the subject of a consultation, and the consulted DoD Component wishes to assert the exemption, the consulted component will submit the package for approval before responding to the consultation. The package will contain, at a minimum:

- (a) A cover memorandum from a DoD Component official.
- (b) A copy of the initial FOIA request.
- (c) A copy of the documents in electronic format, with only the CISI or MFOQA system data file information marked. Do not indicate information that will be denied under any other exemption.
- (d) Details on how the information recommended for exemption meets the threshold of qualifying as CISI or MFOQA system data file.
- (e) A thorough explanation of the harm that could reasonably be expected to result if the information is released. This explanation must be as specific as possible to allow the DA to make a fully informed determination; however, it should contain only publicly releasable information since the DA’s determination, accompanied by a statement of the basis for determination, will be made available on the FOIA section of the DoD Open Government Website.
- (f) Any documentation of the public interest in the release of the information. This could be provided to the DoD Component by the FOIA requester or other interested parties supporting the FOIA request.
- (g) A draft of the DA determination and statement of the basis for determination.

(2) The DO&C will provide the DA determination and the statement of the basis for the determination and post it in the FOIA section of the DoD Open Government Website.

(3) The DoD Component IDA will deny the exempt information and provide a copy of the determination to the FOIA requester. If the DoD Component denying the information is a consulted component, the DoD Component that received and is processing the request will make all necessary notifications to the requester. The FOIA requester will be advised of the right to appeal to the DoD Component's appellate authority.

6.3. INITIAL DETERMINATIONS.

a. Denials of Information.

(1) An IDA must make a determination of whether to withhold information responsive to a FOIA request. The IDA will review the withheld information to determine whether it meets the criteria for withholding pursuant to one or more of the FOIA exemptions. This determination may be made upon the recommendation of a review official.

(2) IDA and review officials will not use the existence of classification markings or distribution limiting statements, such as "For Official Use Only" markings, as justification to withhold information. Information so marked must be reviewed after the receipt of a FOIA request to determine if a FOIA exemption allows the withholding of the information.

(3) To deny information in a requested record that is in the possession and control of the DoD Component, the IDA must determine that one or more of the FOIA exemptions justify withholding all or part of the record.

(4) A Glomar response constitutes a total denial.

b. Reasons for Denying a FOIA Request Other than Exemptions. The following are reasons, other than using one or more exemptions, for denying a FOIA request. The DoD FOIA Program Components will track each reason in its control system database for ease of retrieval and for its input to the annual report.

(1) **No Records.** A reasonable search of files failed to identify responsive records, or no search was undertaken because the DoD Component determined that it would not locate records responsive to the request.

(2) **Referral.** The DoD Component has transferred all responsive records to another DoD Component or federal agency.

(3) **Request Withdrawn.** The FOIA requester withdraws the FOIA request. Additionally, when a FOIA RSC sends a communication to ask if a requester still has interest in the request and the requester does not respond, the FOIA RSC will consider the request as withdrawn.

(4) **Fee-related Reason.** The FOIA requester is unwilling to pay fees associated with a FOIA request; the FOIA requester is past due in the payment of fees from a previous FOIA request; or the FOIA requester disagrees with the fee estimate.

(5) **Records not Reasonably Described.** A record has not been described with sufficient particularity to enable the DoD Component to locate it by conducting a reasonable search.

(6) **Not a Proper FOIA Request for Some Other Reason.** The FOIA requester has failed unreasonably to comply with procedural requirements, other than fee-related requirements, imposed by this issuance.

(7) **Not an Agency Record.** The information requested is not a record within the meaning of the FOIA.

(8) **Duplicate Request.** A duplicate request occurs when the FOIA requester asks for the same information requested in a prior request. If a search for documents responsive to the new request finds documents created since the search was accomplished for the previous request, then it is not considered duplicative. This includes identical requests received from the same requester for the same information through different means (e.g., e-mail, facsimile, mail, courier) at the same or different times.

(9) **Other.** The DoD Components may use the following additional reasons for denying FOIA requests:

(a) **Directed Requester to Another Agency.** The FOIA request is for another federal agency's records (e.g., the Department of State), and the FOIA RSC directs the requester to send a FOIA request to the appropriate agency. This would include a request for another agency's records that are already publicly available.

(b) **Litigation.** The FOIA request is administratively closed because the FOIA requester has filed a complaint in federal court. In this case, the FOIA RSC should consult legal counsel to determine whether to continue processing the FOIA request.

(c) **Misdirected Request.** A misdirected request will not be counted as a request received or processed for annual report purposes.

(d) **Unable to Contact Requester.** The FOIA RSC is unable to contact the FOIA requester after several attempts.

c. Responding to FOIA Requesters. All correspondence with FOIA requesters must include the FOIA request tracking number and the date of the FOIA request.

(1) **Grant.** When a DoD Component decides to release a record, the FOIA RSC should make a copy available promptly to the FOIA requester. Directing a FOIA requester on how to electronically obtain a publicly available DoD record (e.g., a record released under the FOIA and available in a DoD FOIA Program Component's FOIA Library) is considered a grant.

(2) **Adverse Determination.** When a DoD Component provides an adverse determination in response to a FOIA request, the official designated to respond will comply with the procedures in Subpart 286.9 of Title 32, CFR.

d. Providing Documents to FOIA Requesters. See Subpart 286.9 of Title 32, CFR.

e. Commercial Delivery Services. A FOIA RSC may use a commercial delivery service to deliver the requested information in a timelier manner if the FOIA requester asks for the service and pays directly for the service.

6.4. CONSULTATIONS, REFERRALS, AND COORDINATIONS.

a. General Provisions. See Subpart 286.7 of Title 32, CFR.

b. White House Information. DoD FOIA Program Components locating records originating with or containing White House equities, to include the National Security Council Staff, will forward the records as a consultation to the Office of Freedom of Information, which is the FOIA RSC for the OSD/JS. The Office of Freedom of Information will coordinate with the National Security Council Staff and then return the records to the DoD Component for response to the FOIA requester.

c. Government Accountability Office (GAO) Information. The GAO is outside the Executive Branch and not subject to the FOIA. FOIA requests for GAO documents within DoD files will be processed pursuant to the FOIA. If necessary, the DoD Components will consult with the GAO on the releasability of the requested information. The DoD Component will make the final response.

d. (Added)(AF) Consultation. When an Air Force FOIA RSC receives a FOIA request for an Air Force record that contains classified information in which another federal agency (including a Combatant Command) has a clear and substantial interest in the subject matter, consultation with that other organization is required. This can be done verbally or in writing. In order to comply with the Backlog Reduction Initiative, the Air Force has implemented a processing procedure to expedite the processing of FOIA requests for Air Force records containing classified information in which another federal agency must be consulted. This new process includes expeditiously closing FOIA cases for which consultation has been sought. Process a FOIA request for a classified Air Force record that contains another federal agency's or DoD Component's equities as follows:

(1) (Added)(AF) Request that the other federal agency or DoD Component respond within a specified period of time. (T-1).

a. (Added)(AF) If the responsive records consist of 100 or fewer pages, request the other federal agency or DoD Component to provide its review and proposed release determination concerning its equities within 30 days of its receipt of the request for consultation. (T-1).

b. (Added)(AF) If the responsive records consist of more than 100 pages, request the other federal agency or DoD Component to provide its review and proposed release determination concerning its equities within 90 days of its receipt of the request for consultation. (T-1).

c. (Added)(AF) For requests for consultation that are pending upon publication of this change, contact the other federal agency or DoD Component and request it provide its

review and proposed release determination concerning its equities within the periods specified in paragraph d.(1).a. or d.(1).b., as appropriate, following its receipt of the request for a response. (T-1).

(2) (Added)(AF) In seeking consultation, the RSC will notify the other federal agency that the Air Force will release all Air Force releasable information from the record and withhold all classified information containing the other federal agency's equities if the other agency does not reply within the requested timeframe. If the other federal agency has not replied by the requested date, no other FOIA exemptions will be claimed to withhold the other agency's classified equities. Only exemption (b)(1) will be used to withhold other federal agency classified equity information that is marked as classified in the Air Force document(s). (T-1).

(3) (Added)(AF) Air Force information from the classified record that may be releasable will be released only after concurrence by the appropriate Air Force classifier and IDA. If the appropriate classifier and IDA determine it is not in the Air Force's interest to release the Air Force unclassified or declassified information from a classified record containing another agency's classified or unclassified equities, the case will remain open and no information will be released from the Air Force record until the other agency(s) has responded to the Air Force's consultation request. (T-1).

(4) (Added)(AF) The response letter to the requester will advise the requester of the Air Force's release decision with respect to all information withheld by the Air Force, including information withheld under exemption (b)(1) concerning another federal agency's or DoD Component's classified or unclassified equities contained in the classified record. The requester will be provided normal appeal rights to the Air Force, and the FOIA case will be closed in eFOIA. The requester will not be referred to the other federal agency or DoD Component (or informed what other federal agencies or DoD Components have equities in the Air Force record). (T-1).

a. (Added)(AF) If, after the Air Force responded to the requester and closed the FOIA case, the other federal agency or DoD Component responds to the Air Force consultation request with a determination that some of the information in which it has an equity may be released. The RSC will re-open the case, obtain a review of the information the other federal agency or DoD Component has determined to be releasable by the appropriate Air Force OPR and classifier. If the Air Force OPR and classifier determines that no Air Force interest would be harmed by the disclosure of the information, the RSC will provide the information to the requester with additional appeal rights. The additional appeal rights should make clear that an appeal under these circumstances is submitted to the Air Force. (T-1).

b. (Added)(AF) If, after the Air Force responded to the requester and closed the FOIA case, the other federal agency or DoD Component responds to the Air Force's consultation request with a determination that none of the information in which it has an equity may be released, the RSC will not further engage the requester or re-open the case. Document the other federal agencies or DoD Component's decision in the case file. (T-1).

c. (Added)(AF) If the requester appeals any withholding by the other agency or

DoD Component of the other federal agency's or DoD Component's equities, notify the federal agency or DoD Component and forward a copy of the appeal. Do not close the appeal until the federal agency or DoD Component has responded with their appeal review determination. (T-1).

(5) (Added)(AF) In seeking consultation, the RSC will notify the other federal agency that the Air Force will release all Air Force releasable information from the record and withhold all information containing the other federal agency's equities if the other federal agency does not reply within the required timeframe. If the other federal agency has not replied in the required timeframe, no other FOIA exemptions will be claimed to withhold other agency equity information. Exemption (b)(1) will only be used to withhold other federal agency equity information that is marked as classified in the Air Force document(s). (T-1).

(6) (Added)(AF) Air Force information from the classified record that may be releasable will be released only after concurrence by the appropriate Air Force classifier and IDA. If the appropriate classifier and IDA determine it is not in the Air Force's interest to release Air Force unclassified or declassified information from a record containing another federal agency's classified equities, the case will remain open and no information will be released from the Air Force record until the other agency(s) has responded to the Air Force's consultation request. (T-1).

(7) (Added)(AF) The response letter to the requester will advise the requester of the Air Force's release decision with respect to all information withheld by the Air Force, to include information withheld under exemption (b)(1) concerning another agency's equities. The requester will be provided normal appeal rights to the Air Force, and the FOIA case will be closed in eFOIA. The requester will not be referred to the other agency (or informed what other agencies have equities in the Air Force record) for a determination of the release of other agency equity information contained in an Air Force record that was redacted and withheld by the Air Force under this procedure. (T-1).

a. (Added)(AF) If the other federal agency(s) responds to the Air Force's consultation request after the Air Force redacted their equity information from the Air Force record and had closed the FOIA case, and determined any of their equity information is releasable, re-open the case and respond to the requester with the other agency's release determination and provide additional appeal rights. (T-1).

b. (Added)(AF) If the other federal agency responded with a denial determination, do not further engage the requester or re-open the FOIA case, but document the other agency's decision in the case file. (T-1).

c. (Added)(AF) In the event the requester appeals, the RSC will re-engage with the other federal agencies who have equities in the Air Force record to obtain their release determination as to their equity information. The appeal will not be closed until the other agency(s) have responded with their release recommendations as to their information previously withheld by the Air Force. (T-1).

6.5. APPEALS. See Subpart 286.11 of Title 32, CFR.

6.5.1. (Added)(AF) FOIA requesters seeking Air Force records must address appeals to the Office of the Secretary of the Air Force, through the FOIA RSC of the IDA that denied the request. Requestors may submit appeals by mail, email, fax, or online at the Air Force Public Access Link: <https://www.efoia.af.mil/palMain.aspx>. Requesters should attach a copy of the denial letter to their appeal and give reasons for appealing. Air Force IDA may reconsider any prior denials and may grant all or part of a requester's appeal. When any appellate action sought by a FOIA requester is denied by an IDA, the IDA will include a statement that the issues raised in the appeal were considered and rejected (in full or in part) in any file sent to the Secretary of the Air Force in the course of a FOIA appeal action. Send all appeals of IDA decisions at the wing level through the MAJCOM FOIA RSC for sending to the Secretary of the Air Force's designated appellate authority, SAF/GCA (through Air Force Legal Operations Agency [AFLOA/JACL]), for a final administrative determination.

6.5.2. (Added)(AF) Coordinate appeals with an Air Force attorney (and the OPR, if appropriate) so they can consider factual and legal arguments raised in the appeal, and can prepare written assessments of issues raised in the appeal to assist the IDA in considering the appeal. FOIA RSC (through MAJCOM FOIA RSC) send all appeals to the Secretary of the Air Force through AFLOA/JACL for consideration, unless the IDA has reconsidered the initial denial action, and granted the appeal in full as requested by the requester. (T-1).

6.5.3. (Added)(AF) If a requester appeals a "no records" determination, organizations must search again or verify the adequacy of their first search (for example, if a second search would be fruitless, the organization may include a signed statement from either the records OPR or FOIA Manager detailing why another search was not practical). The appeal package must include documents (to include a certification from the records OPR) that show how the organization tried to find responsive records. (T-1). In the event a requester sues the Air Force to contest a determination that no responsive records exist, formal affidavits may be required to support the adequacy of any searches conducted.

6.5.4. (Added)(AF) If a requester appeals a denial of a fee waiver, fee estimate, or fee reduction request, FOIA offices and record OPR must account for actual and estimated costs of processing a request, and will include copies of the DD Forms 2086 or 2086-1 in the appeal package.

6.6. FEE SCHEDULE. See Subparts 286.12 and 286.13 of Title 32, CFR.

6.7. FOIA LITIGATION.

a. FOIA requesters may seek an order from a U.S. District Court to compel release of information after administrative remedies have been exhausted (e.g., when the FOIA requester has filed an administrative appeal of an adverse action or when the DoD FOIA Program Component has failed to respond within the time limits prescribed by the FOIA). The

Department of Justice “Freedom of Information Act Guide” provides more detailed guidance on FOIA litigation.

b. If a DoD Component is served with a complaint concerning a FOIA request that is still open, it will administratively close the FOIA request after consultation with legal counsel.

c. FOIA officers should confer with legal counsel or Department of Justice attorneys on whether administrative processing should continue and whether it is appropriate to communicate directly with the FOIA requester or requester’s counsel.

SECTION 7: EDUCATION AND TRAINING

7.1. GENERAL. In accordance with Section (j)(2)(F) of the FOIA, the purpose of the DoD FOIA educational and training programs is to provide DoD personnel who have FOIA responsibilities as one of their primary duties, and DoD attorneys, with the knowledge and skills necessary to ensure compliance with the FOIA. Fulfilling this purpose will improve customer service to members of the public and improve the public trust in the DoD.

7.2. PROCEDURES.

a. The DO&C establishes a DoD FOIA educational and training program to provide personnel involved in the day-to-day processing of FOIA requests with a thorough understanding of the provisions and requirements of Part 286 of Title 32, CFR, the FOIA, and this issuance.

b. Each DoD FOIA Program Component designs its FOIA educational and training programs to fit the particular requirements of its personnel, dependent upon their degrees of involvement in implementing the FOIA. These programs will service two target audiences.

(1) Personnel who are involved in the day-to-day processing of FOIA requests.

(2) Staff personnel who provide search or review staff-support to the DoD FOIA Program Component FOIA process.

c. (Added)(AF) FOIA Managers and anyone who processes FOIA request are required to complete annual FOIA Computer Based Training (CBT). It is also highly encouraged that FOIA monitors, OPR and IDA complete the annual training. Initial training should be completed within 5 days of appointment for all FOIA personnel. (T-1).

d. (Added)(AF) When the SAF/CIO A6XA Annual FOIA Conference/Information Access Professional Workshop is funded/approved, all FOIA Managers are highly encouraged to attend. The Information Access Professional Workshop provides education and training on current statutory, regulatory, and directive-based FOIA, Privacy, Records Management, Information Collections, Section 508, and various other programs. The overall goal of the conference/workshop is to enhance the ability of the AF FOIA Managers to comply with CIO governance requirements. Individuals who perform duties at any levels in the Air Force Information Access Programs are encouraged to participate.

7.3. SCOPE AND PRINCIPLES. The programs will:

a. Familiarize personnel with the requirements of the FOIA and its implementation by Part 286 of Title 32, this issuance, and respective DoD FOIA Program Component issuances.

b. Instruct personnel who act in FOIA matters on the provisions of Part 286 of Title 32 and this issuance, and advise them of the legal hazards involved in and the strict prohibition against arbitrary and capricious withholding of information.

c. Provide procedural and legal guidance and instruction to initial denial and appellate authorities concerning the discharge of their responsibilities.

7.4. IMPLEMENTATION. To ensure uniformity of interpretation, the DoD FOIA Program Components will coordinate their educational and training programs with the DO&C.

GLOSSARY

G.1. ACRONYMS.

CFR	Code of Federal Regulations
CISI	Critical Infrastructure Security Information
DA	Director of Administration
DO&C	Directorate for Oversight and Compliance
DoDD	DoD directive
DoDI	DoD instruction
DoDM	DoD manual
FOIA	Freedom of Information Act
GAO	Government Accountability Office
IDA	initial denial authority
MFOQA	military flight operations quality assurance
OGIS	Office of Government Information Services
RSC	Requester Service Center
U.S.C.	United States Code

G.2. DEFINITIONS. Unless otherwise noted, these terms and their definitions are for the purpose of this issuance.

administrative appeal. A request by a member of the public, made pursuant to the FOIA, asking the appellate authority of a DoD Component to reverse, modify, or reconsider any adverse determination.

adverse determination. Defined in Subpart 286.9 of Title 32, CFR.

agency record. Includes all documents or records created or obtained by a U.S. Government agency that are in the agency's possession and control at the time a FOIA request is received. Four factors determine an agency's control:

The intent of the creator of the document to retain control over the record.

The ability of the agency to use and dispose of the record as it sees fit.

The extent to which agency personnel have read or relied upon the document.

The degree to which the document was integrated into the agency's record systems or files. Records maintained by a government contractor for records management purposes are considered in the DoD Component's possession. Records created by an agency employee during employment, including e-mails, may be either agency records or personal files.

Examples of agency records include:

Research data produced during the performance of a federal grant used by the U.S. Government in developing an agency action that has the force and effect of law, in accordance with Office of Management and Budget Circular No. A-110.

All recorded information, regardless of form or characteristics. "Form or characteristics" refers to physical media type or transmission mode desired by the FOIA requester (e.g., computer disk, computer tape, file transfer protocol, photographs, videotape, and microfiche).

Examples of agency records do **not** include:

Objects or articles such as structures, furniture, vehicles, and equipment, whatever their historical value or value as evidence.

Anything that is not a tangible or documentary record, such as an individual's memory or oral communication.

Personal files.

The definition of an agency record under the FOIA is more expansive than the definition of a federal record. For example, documents such as drafts and working files are not considered official records, but are still agency records responsive to FOIA requests.

appellate authority. The DoD FOIA Program Component head, or designee, having jurisdiction to review and possibly reverse, remand, or amend any adverse determination.

CISI. Defined in Section 130e(c) of Title 10, U.S.C.

consultation. The process whereby, in certain situations, a federal agency transfers a FOIA responsive document to another federal agency or non-government entity to obtain recommendations on the releasability of the document. After review, the document is returned to the original agency for response to the FOIA requester or further review.

Defense Criminal Investigative Organization. A DoD Component that conducts criminal investigations. These are the U.S. Army Criminal Investigation Command, Naval Criminal Investigative Service, Air Force Office of Special Investigations, and Defense Criminal Investigative Service.

deliberative. Having the function of deliberating.

electronic records. Records (including e-mail) created, stored, and retrievable by electronic means.

federal agency. Defined in Section 552(f)(1) of Title 5, U.S.C.

first-party requester. A FOIA requester that is requesting information that is about themselves.

FOIA Public Liaison. A supervisory official to whom a FOIA requester can raise concerns about the service the FOIA requester receives from a FOIA RSC and who is responsible for assisting in reducing delays, increasing transparency and understanding of the status of requests, and assisting in the resolution of disputes.

FOIA request. A written request for agency records that reasonably describes the records sought, enabling a DoD Component employee familiar with the files to locate the records with a reasonable amount of effort.

FOIA 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.

FOIA RSC. A DoD Component office that receives FOIA requests from and responds directly to the public on the status of their request.

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 (e.g., all the various compact disk and digital video disk variations).

format. A layout for data.

Glomar response. A response to a FOIA request where the DoD Component neither confirms nor denies the existence or nonexistence of records responsive to the FOIA request.

IDA. An official who has been granted authority by a DoD Component head to withhold information requested pursuant to the FOIA for one or more of the nine categories of records exempt from mandatory disclosure, as described in Section 5.

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

international organization. Defined in Section 130c(h)(3) of Title 5, U.S.C.

MFOQA system data file. Defined in Section 2254(a)(2) of Title 10, U.S.C.

Military Department counterintelligence organization. An element within a Military Department that is authorized to conduct counterintelligence investigations. They are Army Counterintelligence, Naval Criminal Investigative Service, and the Air Force Office of Special Investigations.

misdirected FOIA request. A FOIA request for DoD records that is addressed to FOIA RSC that is not itself the FOIA RSC to process the request. For example, a FOIA requester sends a request for an Air Force contract to the Navy.

neutral. An individual who, with respect to an issue in controversy, functions specifically to aid the parties in resolving the controversy.

non-responsive. Information or records not requested by a FOIA requester.

perfected FOIA request. A FOIA request that arrives at the FOIA RSC of the DoD Component in possession of the records. The statutory time limit for responding to a FOIA request does not begin until it is perfected.

person. Defined in Section 551(2) of Title 5, U.S.C.

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. Examples include:

Business or professional files created before entering U.S. Government service; files created during or relating to previously held positions, political materials, and reference files.

Private files brought into, created, or received in the office; family and personal correspondence; and materials documenting professional activities and outside business or political pursuits, including manuscripts and drafts for articles and books and volunteer and community service records that are considered personal, even if created or received while in office, because they do not relate to agency business.

Work-related personal files, including e-mails, diaries, journals, notes, and personal calendars and appointment schedules. Though work-related, these files may be personal if they are used only as reminders and personal observations on work-related topics and not for the transaction of government business.

pre-decisional information. Information created before the decision maker reached a final decision.

Privacy Act request. Defined in DoD 5400.11-R.

Privacy Act system of records. Defined in DoD 5400.11-R.

referral. The process whereby a DoD FOIA Program Component receiving a FOIA request locates documents originating with another DoD Component or federal agency. Accordingly, the FOIA request and documents are transferred to the originating DoD Component or federal agency for response directly to the FOIA requester.

responsive. Information or agency records requested by a FOIA requester.

(Added)(AF) Third-party requester. A requester seeking records that contain personal information about another individual.

toll. To delay, suspend, or hold off the effects of a statute.

REFERENCES

- Code of Federal Regulations, Title 32, Part 286
- Code of Federal Regulations, Title 48
- Department of Justice “Guide to the Freedom of Information Act,” current edition¹
- Department of Justice, Office of Information Policy, FOIA Update, Vol. XVI, No. 3, “Determining the Scope of a FOIA Request,” January 1, 1995
- Deputy Secretary of Defense Memorandum, “Reorganization of the Office of the Deputy Chief Management Officer,” July 11, 2014
- DoD 5230.30-M, “DoD Mandatory Declassification Review (MDR) Program,” December 22, 2011
- DoD 5400.11-R, “Department of Defense Privacy Program,” May 14, 2007
- DoD Directive 5100.03, “Support of the Headquarters of Combatant and Subordinate Unified Commands,” February 9, 2011
- DoD Directive 5105.53, “Director of Administration and Management (DA&M),” February 26, 2008
- DoD Directive 5105.82, “Deputy Chief Management Officer (DCMO) of the Department of Defense,” October 17, 2008
- DoD Directive 5400.07, “DoD Freedom of Information Act (FOIA) Program,” January 2, 2008
- DoD Instruction 1100.22, “Policy and Procedures for Determining Workforce Mix,” April 12, 2010
- DoD Instruction 5400.04, “Provision of Information to Congress,” March 17, 2009
- DoD Instruction 6055.07, “Mishap Notification, Investigation, Reporting, and Record Keeping,” June 6, 2011
- DoD Manual 5200.01, Volume 1, “DoD Information Security Program: Overview, Classification, and Declassification,” February 24, 2012
- DoD Manual 8910.01, Volume 1, “DoD Information Collections Manual: Procedures for DoD Internal Information Collections,” June 30, 2014, as amended
- Office of Federal Procurement Policy Letter 11-01, “Performance of Inherently Governmental and Critical Functions,” September 12, 2011
- Office of Management and Budget Circular No. A-11, “Preparation, Submission, and Execution of the Budget,” June 2015
- Office of Management and Budget Circular No. A-76, “Performance of Commercial Activities,” May 29, 2003
- Office of Management and Budget Circular No. A-110, “Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals, and Other Non-profit Organizations,” September 20, 1999
- United States Code, Title 5
- United States Code, Title 10

¹ Available at: <https://www.justice.gov/oip/doj-guide-freedom-information-act>

United States Code, Title 17, Section 106

United States Code, Title 50, Section 401a(4)

(Added)(AF) AFPD 33-3, *Air Force Information Management*, 21 June 2016

(Added)(AF) AFI 17-100, *Air Force Information Technology (IT) Service Management*, 15 September 2016

(Added)(AF) AFI 33-332, *Air Force Privacy Program*, published date, 17 November 2016

(Added)(AF) AFI 33-360, *Publications and Forms Management*, 1 December 2015

(Added)(AF) AFI 35-101, *Public Affairs Responsibilities and Management*, 12 January 2016

(Added)(AF) AFI 35-102, *Security Policy and Review Process*, 7 June 2017

(Added)(AF) AFMAN 33-363, *Management of Records*, 9 June 2016

(ADDED) (AF) APPENDICES**(Added)(AF) APPENDIX 1****SAMPLES, AIR FORCE FREEDOM OF INFORMATION ACT PROCESSING DOCUMENTS**

AP1.1. GENERAL. This appendix includes *suggested* language in paragraph format that tracks Air Force and DoD Freedom of Information Act guidance. The rest of the body of letters and memorandums should comply with Air Force administrative guidance. Each MAJCOM may elect to prepare their own verbiage to meet their specific needs, so long as FOIA processing actions are consistent with guidance in DoDM 5400.07 and this AFMAN. In this appendix, language in italics is for explanatory purposes only. **DO NOT** include any of the italicized language of this appendix in your FOIA correspondence. When optional language must be selected, the optional language will be presented within brackets. Use only the portions that apply to the specific request or response.

AP1.2. INITIAL RECEIPT OF FREEDOM OF INFORMATION ACT REQUEST.

“We received your FOIA request dated ## Month year, for *(summarize the request)* on ## Month year *(date received)*. We will provide you our release determination by *(enter date that is 20 workdays from date you received the request)*. [Based on our initial review, we believe we cannot process your request within 20 workdays.] *(If “cannot” is used, add appropriate explanation; examples follow.)* Please contact (name and commercial telephone number) if you have any questions and refer to case number#####.”

AP1.3 INTERIM RESPONSE.

“Your request will be delayed because: all or part of the responsive records are not located at this installation; *(and/or)* Processing this FOIA request will require us to collect and review a substantial number of records *(and/or)* Other Air Force activities or other agencies *(if applicable)* to include the submitter of the information, need to be involved in deciding whether or not to release the responsive records. We expect to reply to your request not later than *(give a date that is not more than 30 workdays from the initial receipt of the request)*; *(or)* *(If processing the FOIA request will take more than the allowed time limits to respond)*. We find we are unable to meet the time limits imposed by the FOIA in this instance because *(tell the requester the reason for the delay)* *(example: the records are classified and must be reviewed for possible declassification by other activities or agencies)*. We anticipate completing your request by (date).

(When charging fees is appropriate), “The FOIA provides for the collection of fees based on the costs of processing a FOIA request and your fee category. Based on the information in your request, we have determined your fee category is [commercial/educational *or* noncommercial scientific institution *or* news media/all others]. As a result, you *(if commercial category)* are required to pay all document search, review and duplication costs over \$25.00. *(or)* As a result, you *(if educational or*

noncommercial scientific institution or news media) will be provided the first one hundred (100) pages free of charge; you are required to pay any duplication costs over and above those amounts. (or) As a result, you (*if all others*) will be provided the first two (2) hours of search time and the first one hundred (100) pages free of charge; you are required to pay any search and duplication costs over and above those amounts.”

AP1.4. REQUEST FOR A MORE SPECIFIC DESCRIPTION.

“Your request does not sufficiently describe the desired records. The FOIA applies to existing Air Force records; without more specific information from you, we cannot identify what documents might be responsive to your request. Please give us whatever additional details you may have on the Air Force records you want. Can you tell us when the records were created, and what Air Force element may have created the records? If this request involves an Air Force contract, do you know the contract number and dates it covered? Our address is (*include name and complete mailing address*), our fax number is (*give fax number*) our e-mail address is (*optional - give complete e-mail address*). Based on the original request you sent us, we are unable to respond.”

AP1.5. SINGLE LETTER ACKNOWLEDGING RECEIPT OF REQUEST AND GIVING FINAL RESPONSE (*If you can complete a FOIA request within the statutory 20-workday processing period, Air Force elements may elect to send a single letter to the requester, along with responsive records which are released to the requester in full*).

“We received your Freedom of Information Act (FOIA) request dated ## Month year, for (*summarize the request*) on ## Month year (*date received*). A copy (or) Copies of (*describe the record(s) being released*) [is/are] releasable and [is/are] attached.”

AP1.6. COLLECTION OF FEES.

“The FOIA provides for the collection of fees based on the costs of processing a FOIA request and your fee category. We have placed you in the (*enter the fee category*) fee category. In your case, we have assessed a charge of \$ ___ for processing your request. The fee was calculated in the following manner: (*Give a detailed cost breakdown: for example, 15 pages of reproduction at \$0.15 per page; 5 minutes of computer search time at \$43.50 per minute, 2 hours of professional level search at \$48 per hour.*) Please make your check payable to “U.S. Treasurer” and send it to (*give your complete mailing address*) by (*date 30 days after the letter is signed*). (or) The FOIA provides for the collection of fees based on the costs of processing a FOIA request and your fee category. We have placed you in the (*enter the fee category*); however, in this case, we have waived collecting fees.”

AP1.7. MULTITRACK PROCESSING LETTERS TO FOIA REQUESTERS (*When using the multitrack FOIA processing system, determine which of the following paragraphs to include in your letters to the requester. To the extent it may apply, include language from paragraph 2 of the sample. If a requester asks for expedited processing, answer carefully if you decide not to provide expedited processing, because requesters may appeal denial of their request for expedited processing. Advise requestors placed into the complex track in writing how they can simplify their request to qualify for the simple track.*)

“We received your FOIA request dated ## Month year, for *(summarize the request)* on ## Month year *(date received)*. Because our organization has a significant number of pending FOIA requests, which prevents us from making a response determination within 20 workdays, we have instituted multitrack processing of requests. Based on the information you provided, we have placed your request in the [simple *or* complex] track. We have assigned number ##### to identify your request; should you need to contact us about your request, please write or call *(name and telephone)* and use this number to assist us in responding more promptly.

AP1.8. IF THE REQUEST IS PLACED IN THE COMPLEX TRACK.

“In your case, processing your request is complex because *(give basic reasons this is a complex case: request was vague or complicated; the records sought are voluminous; multiple organizations will have to work on this request; records are classified; responsive records came from another command/another service/a nongovernment source; responsive records were part of the Air Force's decision-making process, and the prerelease review will require policy determinations from different Air Force elements; records describe law enforcement activities; records involve foreign policy issues; due to the nature of your request and/or the nature of our computer system, responding to your request or providing a response in the electronic format you requested will be technically complex, etc.)*.

Simplifying your request might permit quicker processing in the following ways: *(describe ways the search could be narrowed to fewer records, or ways policy issues could be avoided, etc.)* Can you tell us when the records were created, and what Air Force element may have created the records? If this request involves an Air Force contract, do you know the contract number? Please give us whatever additional details you may have on the Air Force records you are seeking, so we can attempt to streamline the processing of your request. Our address is *(give complete mailing address)*, our fax number is *(give fax number)* our e-mail address is *(optional - give complete e-mail address)*.”

AP1.9. IF THE REQUESTER ASKS THAT YOU EXPEDITE THEIR REQUEST:

“Because individuals receiving expedited processing may receive a response before other earlier requesters, there are administrative requirements you must meet before we can expedite a request. In your request, you asked that we expedite processing. In order for us to expedite a request, the requester must provide a statement certifying the reasons supporting their request are true and correct to the best of their knowledge.

“There are four categories of requests eligible for expedited processing. We can expedite your request if you demonstrate you need the information because (1) failure to obtain the records on an expedited basis could pose an imminent threat to life or physical safety of an individual; or (2) the information is urgently needed by an individual primarily engaged in disseminating information in order to inform the public about actual or alleged Federal Government activity; or (3) failure to obtain the records on an expedited basis could lead to an imminent loss of substantial due process rights, or (4) release would serve a humanitarian need by promoting the welfare and interests of mankind.

“In the second category, "urgently needed" means the information itself has a particular value that it will lose if it is not disseminated quickly. Ordinarily this means the information concerns a breaking news story of general public interest. Historic information, or information sought for litigation or commercial activities usually would not qualify for expedited processing in the second category. Also, the fact that a news organization has an internal broadcast or publication deadline, so long as the deadline was unrelated to the nature of the information itself (for example, the information was not a breaking news story of general public interest), this would not make the information "urgently needed."

“In this case, we have determined your FOIA request [will /will not] receive expedited processing. We came to this conclusion because you [did /did not] demonstrate you needed the information because failure to obtain the records on an expedited basis [could or could not] reasonably expect to pose an imminent threat to life or physical safety of an individual (*or*) the information [is or is not] urgently needed in order to inform the public about actual or alleged Federal Government activity (*or*) failure to obtain the records on an expedited basis [could or could not] reasonably expect to lead to an imminent loss of substantial due process rights, (*or*) release [would or would not] serve a humanitarian need by promoting the welfare and interests of mankind (*and/or*) your request for expedited processing did not meet the statutory requirements of the FOIA; you did not provide enough information to make a determination of compelling need for the information you requested (*and/or*) you did not properly certify your request.”

AP1.10. IF YOU DENY A REQUEST FOR EXPEDITED PROCESSING:

“If you consider our decision not to expedite your request incorrect, you may appeal our decision. Include in your appeal letter the reasons for reconsidering your request for expedited processing, and attach a copy of this letter. Address your appeal to: Secretary of the Air Force through (address of FOIA RSC) or submit online at the Air Force Public Access Link, <https://www.foia.af.mil/palMain.aspx>.

“In the meantime, we will continue to process your request in the [simple/complex] processing track.”

“You may also contact the Air Force FOIA Public Liaison Officer, Ms. Anh Trinh, concerning this response at AF FOIA Public Liaison Office (SAF/CIO A6XA), 1800 Air Force Pentagon, Washington, DC 20330-1800, usaf.pentagon.saf-cio-a6.mbx.af-foia@mail.mil or (703) 614-8500. 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”.

AP1.11. CERTIFICATION, COMPUTER SYSTEMS MANAGER (ELECTRONIC

RECORDS OR FORMAT REQUESTED) *(When answering a request for electronic records, based on the configuration of your hardware and/or software, certain factors may make a particular request complex. Have your computer system manager advise you whether or not they can create the new record/format on a "business as usual" basis. If producing the record/format would entail a significant expenditure of resources in time and manpower that would cause significant interference with the operation of the information system and adversely affect mission accomplishment, you do not need to process the request. The FOIA RSC needs to get a certification from the computer systems manager to document this determination to support their response. Possible language for this certification is provided below.)*

“I, (rank/grade and name) am the computer systems manager for (organization with electronic records responsive to FOIA request). In consultation with (FOIA office), I have considered the FOIA request of (requester's name), our ##### (FOIA identifier), which asked for(describe electronic record or format). We [do/do not] have electronic records that are responsive to this request (or) data that we [can/cannot] configure into the requested format.

(If there are electronic records) The existing electronic records [do/do not] contain non-releasable data that we [can/cannot] remove from the electronic record. Because of the way our [computer system/database/software] (use all that apply, specify hardware and/or software nomenclature if possible; for example, IBM ###, Microsoft Excel) is configured, creating the electronic record (or) modifying the existing record/format would entail a significant expenditure of resources in time and manpower that would cause significant interference with the operation of the information system and adversely affect mission accomplishment (describe how responding would interfere and time/manpower resources required, give estimated reprogramming time, if possible). I understand that when the capability exists to respond to a FOIA request that would require only a business as usual approach to electronically extract the data and compile an electronic record or reformat data to satisfy a FOIA request, then creation of the electronic record or reformatting the data would be appropriate. In this case, a significant expenditure of resources and manpower would be required to compile the electronic record (or) reformat existing data. This activity would cause significant interference with the operation of our automated information system. I certify creation of the electronic record (or) reformatting existing data in order to respond to this request would not be reasonable, under the circumstances.”

Signature

(Date Signed)

(Signature Block)

(NOTE: *Some electronic data requests may include a request for software. You may have to release government-developed software that is not otherwise exempt, if requested under the FOIA. Exemptions 1 -classified software, 2 -testing, evaluation, or similar software, 3-exempt by statute, 5- deliberative process/privileged software, and 7 -law enforcement operations software may apply, based on the nature of the requested software. If the software is commercial off-the-shelf software, as opposed to software developed by the government, the software may qualify to be withheld from release under*

FOIA exemption 4. See paragraph C3.2.1.5.7 which would permit withholding of: "Computer software copyrighted under the Copyright Act of 1976 (17 U.S.C. 106) (reference (t)), the disclosure of which would have an adverse impact on the potential market value of a copyrighted work."

AP1.12. "NO (PAPER OR ELECTRONIC) RECORDS" OR "REQUESTED FORMAT NOT AVAILABLE" LETTERS

“This is in response to your Freedom of Information Act (FOIA) request dated ## Month year, for *(summarize the request)* on ## Month year *(date received)*, our number #####.

“A thorough search by *(identify the unit(s) that tried to locate responsive records)* did not locate any records responsive to your request. *(If the requester asked questions, and there are no responsive records that would provide the answers to those questions):* The FOIA applies to existing Air Force records; the Air Force need not create a record in order to respond to a request.”

(OR)

“A thorough assessment by the OPR and the computer systems manager has determined we cannot provide the [electronic record data] in the format you requested. *(If this can be done on a "business as usual basis"):* [Paper copies American Standard Code for Information Interchange (ASCII) files] of the data you requested are attached.

“If you interpret this "no records" response as an adverse action, you may appeal it in writing to the Secretary of the Air Force or submit your appeal on line at the Air Force’s Public Access Link: www.foia.af.mil/palMain.aspx. If writing, your appeal should be postmarked no later than 90 calendar days from the date of this letter. Address your letter as follows:

Secretary of the Air Force
Thru: *(Freedom of Information Act Requester Service Center)*
(mailing address)

“You may also contact the Air Force Freedom of Information Act Public Liaison Officer, Ms Anh Trinh, concerning this response at AF FOIA Public Liaison Office (SAF/CIO A6XA), 1800 Air Force Pentagon, Washington, DC 20330-1800, usaf.pentagon.saf-cio-a6.mbx.af-foia@mail.mil or (703) 614-8500. 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”.

“The FOIA provides for the collection of fees based on the costs of processing a FOIA request

and your fee category. We have placed you in the (enter category) fee category; however, in this case, we have waived fees. (If paper copies or ASCII files are provided:) The FOIA provides for the collection of fees based on the costs of processing a FOIA request and your fee category. In your case, as a requester in the fee category of (add appropriate category), we have assessed a charge of \$ _____ for processing your request. The fee was calculated in the following manner: (Give a detailed cost breakdown: for example, 15 pages of reproduction at \$0.15 per page; 5 minutes of computer search time at \$43.50 per minute, 2 hours of professional level search at \$48 per hour.) Please make your check payable to U. S. Treasurer and send it to (give your complete mailing address) by (date 30 days after the letter is signed).”

AP1.13. REFERRAL OR COORDINATION LETTERS. (These letters are to tell the requester all or part of the request was referred to another Air Force organization, to refer or coordinate the request to another federal government organization, and to advise a nongovernment submitter a FOIA request was received for information they submitted.)

AP1.13.1 Letter to Requester.

(If all or part of a request has been referred, write to the requester:) “Your FOIA request dated ## Month year, for (summarize the request) received on ## Month year (date received), our number #####, was referred (or) must be coordinated with (give mailing address of the FOIA office to which you are referring all or part of the request, the identity of the federal government organization you are either coordinating with or are referring all or part of the request to, or that you must coordinate with the nongovernment submitter of responsive information). (On referrals:) That office will process [all/part] of your request (describe which part is being referred if the entire request is not being referred) and they will respond directly to you. (On coordinations:) That organization has a significant interest in the records (or) created the records that may answer to your request. (Before notifying a requester of a referral to another DoD component or federal agency, consult with them to determine if their association with the material is exempt. If so, protect the association and any exempt information without revealing the identity of the protected activity.) (When a nongovernment submitter is involved) The nongovernment submitter of information that may answer your request needs time to respond to the possible release of information under the FOIA.

“Because we must refer (or) coordinate your request outside our organization, your request will be delayed. We will determine whether any records are available; as soon as is practicable, a decision will be made whether to release or to withhold from disclosure any responsive records under the FOIA, Title 5 United States Code Section 552. Your request will be processed as expeditiously as circumstances permit.”

“You may also contact the Air Force FOIA Public Liaison Officer, Ms. Anh Trinh, concerning this response at AF FOIA Public Liaison Office, 1800 Air Force Pentagon, Washington, DC 20330-1800, usaf.pentagon.saf-cio-a6.mbx.af-foia@mail.mil or (703) 614-8500. 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”.

AP1.13.2. Letter To Another Government Agency.

(If all or part of a request was referred or requires coordination, write to the government entity):

“On ## Month year (*date received*), our organization received a FOIA request from (*identity of requester*), attachment 1, dated ## Month year, for (*summarize the request*). Based on our assessment of that request, our number #####, we need to [refer/coordinate] [all/part] of that request to you (*describe which part is being referred or coordinated, if it was not the entire request*). (*Name and phone number of person who agreed to the referral or coordination*) accepted this referral (*or*) coordination action was on (*date*). We notified the requester of this action.

“We [do/do not] hold records responsive to this request. (*If do hold is used:*) Copies of responsive records located in our files are included at Attachment 3 to assist you in making your assessment on the releasability of [our/your] related records. If you need to contact us, our phone number and address is (*give name, phone and complete mailing address*), our fax number is (*give fax number*) our e-mail address is (*give complete e-mail address*).”

AP1.13.3. Letter To Submitter of Contract-Related Information.

(If contractor-submitted information is involved, write to the submitter :) “On ## Month year (*date received*), our organization received a FOIA request from (*identity of requester*), our number #####, dated ## Month year, for (*summarize the request*). Information you submitted to the Air Force was identified as responsive to this request.

“To determine the releasability of the information contained in these documents and to give you the maximum protection under the law, please review the attached documents and give us the information outlined in Attachment 2 (*Appendix 3*). If you feel the information is privileged or confidential, consists of proprietary commercial or financial information, and otherwise meets the statutory requirements for withholding the information from release under FOIA exemption 4, Title 5 U.S.C. 552(b)(4), respond to us in writing not later than ## working days from the date of this letter (usually 5 working days.) If you object to release of this information under the FOIA, identify the items, lines, columns or portions you believe we should withhold from release.

“You will also need to provide a written explanation of how release would adversely impact or cause harm to your competitive position, your commercial standing, or other legally protected interests. An assertion that "we should deny because all of the information was submitted in confidence" or "deny because all of the information was marked as proprietary in nature" would not justify withholding of the requested information under the FOIA. If you need to contact us, call or write (*give name*), phone number is (*give commercial number*), our address is (*give complete mailing address*), our fax number is (*give fax number*) our e-mail address is (*give complete e-mail address*).”

AP1.13.4. Letter Requesting State Department Coordination.

(If the State Department is involved in coordinating on a request, fax or e-mail SAF/AII so they can inform SAF/IA if appropriate). “On ## Month year (date received), our organization received a FOIA (FOIA) request from (identity of requester), our number #####, dated ## Month year, for (summarize the request). Because of the nature of this request, we were advised by (note the individual and organization who told you to coordinate the request with the State Department; this may be an Air Force organization or Combatant Command—give telephone and facsimile numbers if known) that we need to coordinate this request with the Department of State. In accordance with DoDM 5400.07, AFMAN 33-302, paragraph C5.2.8.3, we are informing you of their involvement in this FOIA request. {Provide any specifics available.} Air Force records are involved in this action. If you need to contact us, our phone number is (give commercial and DSN numbers), our address is (give complete mailing address), our fax number is (give fax number) our e-mail address is (give complete e-mail address).”

AP1.14. CERTIFICATION OF INITIAL CLASSIFICATION OR DECLASSIFICATION AUTHORITY (When denying a FOIA request, in whole or in part, because the information requested is classified, the initial classification authority, his or her successor, or a declassification authority, needs to determine if the records are "properly and currently classified," and therefore must be withheld from release under FOIA exemption (b)(1); also, you need to determine that you cannot release any reasonably segregable additional portions. Language that certifies such a determination was made on a FOIA request involving classified records follows).

AP1.14.1. Sample Certification Format - All Information Remains Classified.

“I, (rank/grade and name) am the initial classification authority (or) the successor to the original initial classification authority (or) the declassification authority for (give an unclassified description of the records concerned). In consultation with (FOIA office), I have assessed the FOIA request of (requester's name), our number ##### (FOIA identifier), for records that were properly classified at the time of their creation and currently remain properly classified in accordance with Executive Order 13526 (or) contain information that we have determined is classified in accordance with Executive Order 13526 Section 1.5 () (OR) in accordance with Executive Order 13526 Section 1.5() and is also exempt from declassification in accordance with Section 1.6() of the Executive Order (OR IF THE RECORD IS MORE THAN 25 YEARS OLD) contain information that we have determined is exempt from declassification in accordance with Executive Order 13526 Section 3.4(b)(). Unauthorized release could cause (for TOP SECRET, use exceptionally grave; for SECRET use serious; for CONFIDENTIAL do not add language; should read cause damage) damage to national security. There are no reasonably segregable portions that we can release. Consequently release of this information is denied pursuant to 5 U.S.C. Section 552(b)(1).”

Signature

(Date Signed)

(Signature Block)

AP1.14.2. Sample Certification Format - Portions Remain Classified.

“I, (rank/grade and name) am the initial classification authority (OR) the successor to the original initial classification authority (OR) the declassification authority for (give an unclassified description of the records concerned.) In consultation with (FOIA office), I have

assessed the FOIA request of (*requester's name*), our number ##### (*FOIA identifier*), that asked for records, (*OR*) portions of which were properly classified at the time of their creation. Portions of the records currently remain properly classified in accordance with Executive Order 13526. The bracketed information is currently and properly classified in accordance with Section 1.5 (*add appropriate subparagraph*), Executive Order 13526, and is also exempt from declassification in accordance with Section 1.6() of the Executive Order (***OR IF THE RECORD IS MORE THAN 25 YEARS OLD***) contain information that we have determined is exempt from declassification in accordance with Executive Order 13526 Section 3.4(b)(). Unauthorized release could cause (*for TOP SECRET use exceptionally grave; for SECRET use serious; for CONFIDENTIAL do not add language; should read cause damage*) damage to national security. There are no other reasonably segregable portions that we can release. Consequently this information is denied pursuant to 5 U.S.C. Section 552(b)(1).”

Signature

(*Date Signed*)

(*Signature Block*)

AP1.15. LETTER TO A REQUESTER WHO HAS WITHDRAWN THEIR REQUEST OR APPEAL (*If a FOIA requester has withdrawn a FOIA request or appeal, sending a final letter to the requester to close the file may be wise. Suggested language to the requester follows.*)

“We received your FOIA request (*OR*) appeal dated ## Month year, on ## Month year (*date received*). After sending us your request (*OR*) appeal, you indicated by (*facsimile, letter*) that you wished to withdraw your request (*OR*) appeal. We have, therefore, closed your file without further action.”

AP1.16. LETTER TO A REQUESTER WHO HAS APPEALED AFTER THE 90-DAY DEADLINE (*We will not process FOIA appeals received after the 90-day time limit, unless the requester provides adequate justification for failing to comply. If you receive a late appeal, and it gives inadequate justification for failing to comply, the FOIA RSC will advise the requester their appeal was closed; suggested language for a letter to an untimely requester follows.*)

“We received your FOIA appeal dated ## Month year, on ## Month year (*date received*). You did not appeal within 90 days of the postmarked date of our denial letter as outlined in our agency regulation. Therefore, we are closing our file.”

“You may also contact the Air Force FOIA Public Liaison Officer, Ms Anh Trinh, concerning this response at AF FOIA Public Liaison Office (SAF/CIO A6XA), 1800 Air Force Pentagon, Washington, DC 20330-1800, usaf.pentagon.saf-cio-a6.mbx.af-foia@mail.mil or (703) 614-8500. 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”.

AP1.17. LETTER TO A REQUESTER WHO HAS APPEALED *(There are occasions when, on reconsideration, an IDA grants all or part of an appeal. When sending their appeal to higher headquarters, notify the requester. Suggested language to a requester who has appealed follows).*

“We received your FOIA appeal, our number #####, dated ## Month year, on ## Month year *(date received)*. We considered the issues raised in your appeal carefully. We have decided to grant *(OR)* partially grant your appeal.”

(If you grant all or part of the appeal): “Upon reconsideration, we are releasing the requested records *(OR)* granting your request. *(If the appeal is only partially granted, describe what portions remain in dispute)*. *(If applicable)*: We are releasing and attaching all or portions of the responsive records. *(If applicable)*: We will continue processing your appeal for the remaining withheld [records/ information].”

“You may also contact the Air Force FOIA Public Liaison Officer, Ms Anh Trinh, concerning this response at AF FOIA Public Liaison Office (SAF/CIO A6XA), 1800 Air Force Pentagon, Washington, DC 20330-1800, usaf.pentagon.saf-cio-a6.mbx.af-foia@mail.mil or (703) 614-8500. 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”.

**(Added)(AF) APPENDIX 2
ADMINISTRATIVE PROCESSING OF AIR FORCE FREEDOM OF INFORMATION
ACT REQUESTS**

AP2.1. General. This appendix is a checklist format of processing steps and explanations of Air Force and DoD guidance. Each MAJCOM may elect to prepare its own checklists to tailor FOIA processing actions within its own organizations to meet their specific needs, so long as it remains consistent with guidance contained in DoDM 5400.07 and this AFMAN.

AP2.2. Procedures: FOIA Requests

AP2.2.1. Note the date the request was received, give the request a unique identifier/number, and log the request.

AP2.2.2. Assess the request to determine initial processing requirements:

AP2.2.2.1. Determine what Air Force elements may hold responsive records.

AP2.2.2.1.1. Are responsive records kept at the same or different installations?

AP2.2.2.1.2. Is referral of (all/part) of the request required?

AP2.2.3. Determine appropriate processing track (*simple/complex/expedited*). (*Air Force FOIA RSC without backlogs do not multitrack FOIA request.*) **NOTE:** Requesters have a right to appeal an adverse tracking decision (for example, when it is determined their request will not be expedited.) Also, if their request qualifies for the complex track, tell requesters so they may limit the scope of their request in order to qualify for the simple track if applicable. FOIA Managers must assess a request before placing it into a specific processing track, and must support their actions should the requester appeal. If a request is not expedited when the requester sought expedited processing, you must advise the requester of the adverse tracking decision in writing. See Appendix 1 for sample language for this kind of letter to a requester.

AP2.2.3.1. Simple - defines a request that can be processed quickly, with limited impact on the responding units. The request clearly identifies the records, involves no (or few) complicating factors (e.g., there are few or no responsive records, involves only one installation and there are no outside OPR, involves no classified records [Exemption 1], a law that exempts the responsive records from disclosure [Exemption 3], no contractor-submitted records [Exemption 4], no deliberative process/privileged materials [Exemption 5], records that contain no [or limited] personal privacy information/did not come from Privacy Act systems of records (per AFI 33-332, *Privacy and Civil Liberties Program*) concerning other individuals [Exemption 6], release of records would have minimal impact on law enforcement [Exemption 7]; no time extensions expected, other than the

additional 10-workdays allowed in situations outlined in the FOIA). If the requested data must come from electronic records, the response can be completed on a "business-as-usual" basis; requires no (or limited) reprogramming of automated information systems and would cause no significant interference with operation of information systems by processing a simple request/providing a response in the electronic format requested.

AP2.2.3.2. Complex - defines a request whose processing will take substantial time, will cause significant impact on responding units. Complications and delays are likely (e.g., the request is vague (poor description of records, unclear who or when records were created), records are massive in volume, multiple organizations will receive tasking, records are classified [Exemption 1], records came from another command/service/a nongovernment source [Exemption 4], records are part of the Air Force's decision-making process, and not incorporated into a final decision [IG/audit reports, legal opinions, misconduct or mishap investigations etc.] or are attorney-client records [Exemption 5], records are largely personal information on another individual or came from Privacy Act systems of records [Exemption 6], records describe law enforcement activities or information from [and/or identities of] confidential sources [Exemption 7]; response cannot be completed on a "business as usual" basis and would require extensive reprogramming or cause significant interference with operation of the automated information systems). Advise requester, in writing, of right to limit the scope of their request in order to qualify for simple track if applicable.

AP2.2.3.3. An expedited request is when a requester asks for expedited processing and explains the compelling need (imminent threat to life or physical safety; urgently needed by a person primarily engaged in disseminating information; due process; or humanitarian need) for the requested information. In order to receive expedited processing, requesters must provide a statement certifying their "demonstration" (description) of their specific "compelling need" or due process/humanitarian need is true and correct to the best of their knowledge. When a requester seeks expedited processing, FOIA RSC must respond in writing to the requester within 10 calendar days after receipt of the request approving or denying their request for expedited processing. Requesters have a right to appeal an adverse decision (e.g., when it is determined their requests will not be expedited). There are four categories of FOIA requests that qualify for expedited processing:

AP2.2.3.3.1. The requester asserts a "compelling need" for the records, because a failure to obtain records quickly could reasonably be expected to pose an imminent threat to the life or physical safety of an individual.

AP2.2.3.3.2. The requester asserts a "compelling need" for the records, because the information is "urgently needed" by an individual engaged in disseminating information to inform the public (primarily news media requesters). Other persons must demonstrate that their primary activity involves publishing or otherwise disseminating information to the public. NOTE: "Urgently needed," in this case, means the information has a particular value that will be lost if it is not disseminated quickly. This normally would apply to a breaking news story of general public interest. Information of historical interest only, or

sought for litigation or commercial activities would not qualify, nor would the fact a news media entity had an internal broadcast deadline of its own, which was unrelated to the "news breaking nature" of the information itself, cause the requested information to qualify as "urgently needed."

AP2.2.3.3.3. Failure to obtain records quickly could cause imminent loss of substantial due process rights OR providing the information quickly would serve a "humanitarian need" (i.e., disclosing the information will promote the welfare and interests of mankind). While FOIA requests falling into these third and fourth categories can qualify for expedited processing, process them in the expedited track behind the requests qualifying for expedited processing based on "compelling need" (the first two types of expedited FOIA requests).

AP2.2.4. Determine fee category of requester (Commercial/Educational—Noncommercial Scientific Institution—News Media/All Others) and assess fee issues. When all assessable costs are \$25.00 or less, waive fees automatically for all categories of requesters. Assess other fee waiver or reduction requests on a case-by-case basis. See Chapter 6.

AP2.2.5. Apply fee waiver/fee reduction criteria in appropriate cases (when requester asks for fee waiver/reduction).

AP2.2.6. Find the Responsive Air Force Records (if any).

AP2.2.6.1. Send the request to the appropriate OPR to search for responsive records and to decide whether to recommend release of any responsive records. Include a DD Form 2086, or a DD Form 2086-1, in each request. The OPR must complete and return the appropriate forms and statements to the FOIA RSC.

AP2.2.6.2. If the OPR find no responsive records, or desire to withhold any responsive records from release to the requester, the OPR must provide a written certificate detailing either their unsuccessful search, or their reasons why the documents should be withheld from release under the FOIA A; the written OPR statements must accompany the copies of the records the OPR desires to withhold as the FOIA action is processed (e.g., include it in any denial or appeal file). NOTE: If any part of a FOIA request is denied, and the requester appeals that denial, include all forms, certificates and documents prepared by the OPR in the FOIA appeal package in Tab 5 (see paragraph AP2.5).

AP2.3. Contacts with FOIA Requesters and Non-Air Force Submitters of Data

AP2.3.1. Contacts with Air Force Elements. A FOIA request is considered "received" (and therefore ready to process) when the FOIA office responsible for processing the request physically receives it, when the requester states a willingness to pay fees set for the appropriate fee category, and, if applicable, when the requester has paid any past FOIA debts and has reasonably described the requested records. Keep proper notes of all memoranda pertaining to requester contacts with Air Force elements regarding a pending

FOIA request and/or attach a copy in the correspondence log in eFOIA. If the requester contacts Air Force elements telephonically about a pending FOIA request, the Air Force member participating in the conversation must prepare notes or memorandums for record (MFR), and log those notes in the requester's FOIA file in eFOIA. If any part of a FOIA request is denied, and the requester appeals that denial, submit documentation of requester contacts with Air Force elements in chronological order in the FOIA appeal package in Tab 1 (see paragraph AP2.5).

AP2.3.2. Contacts with the FOIA Requester. See Appendix 1 for samples of language to use in various types of Air Force FOIA letters. If any part of a FOIA request is denied, and the requester appeals that denial, submit documents sent by Air Force elements to the requester (except for the denial letter, which will be in Tab 3) in the FOIA appeal package in Tab 5 in chronological order (see paragraph AP2.5). Letters that Air Force FOIA RSC may need to send to a FOIA requester include:

AP2.3.2.1. An initial notification letter that the FOIA request was received.

AP2.3.2.1.1. This letter may advise the requester that processing of the FOIA request may be delayed because:

AP2.3.2.1.1.1. All or part of the requested records are not located at the installation processing the FOIA request (see paragraph AP2.3.2.2).

AP2.3.2.1.1.2. An enormous number of records must be collected and reviewed.

AP2.3.2.1.1.3. Other Air Force activities or other agencies, to include (if applicable) the nongovernment submitter of information, need to be involved in deciding whether or not to release the records.

AP2.3.2.1.1.4. If you cannot complete processing of a FOIA request within 20 workdays, advise the requester of the reasons for the delay and give a date (within 30 workdays after receiving the request) when the requester can expect a final decision.

AP2.3.2.1.2. The initial notification letter may advise the requester that all/part of the request was referred to another Air Force element or government activity.

AP2.3.2.1.3. (Added)(AF) The initial notification letter may advise the requester of the appropriate fee category. In cases where fees are appropriate, and requesters have not agreed to pay for responsive records and fees are likely to be more than \$25.00, seek assurances that the requester agrees to pay appropriate fees with a 10-working days suspense. If more information is needed to make a fee category determination, or to determine whether fees should be waived/reduced, inform the requester and provide a 10-working days suspense for response. FOIA RSC may determine fee waiver/reduction requests before processing a FOIA request; if a fee waiver/reduction request is denied, the requester may appeal that denial; he/she may also appeal an adverse fee category determination (e.g., asked for news media fees, but was assessed commercial fees.)

AP2.3.2.1.4. (Added)(AF) The initial notification letter may advise the requester the request does not sufficiently describe the desired records and provide a 10-working days suspense for response. If possible, help the requester identify the requested records by explaining what kind of information would make searching for responsive records easier.

AP2.3.2.1.5. If Air Force elements can complete a FOIA request within the statutory 20-workday processing period, you may elect to send only a single letter to the requester, along with responsive records that are released to the requester in full.

AP2.3.2.2. A letter to the requester that the responding FOIA office uses multitrack processing due to a significant number of pending requests that prevents a response determination from being made within 20 workdays. This letter advises the FOIA requester the track the request is in (simple/complex); in this letter, if expedited processing was requested, the requester is advised if the request will be expedited or not. If the request is found to be complex, you must advise the requester that he/she may alter the FOIA request to simplify processing. If it is determined the request will not be expedited, the requester must be told that he/she can appeal. (This may be the initial letter to the requester, for Air Force elements with multitrack processing; if that is the case, this letter may include sections discussed in paragraph AP2.3.2.1.)

AP2.3.2.3. Subsequent letters to the requester on various subjects (for example, releasing requested records; advising reasons for delays; responding to the letters, facsimiles or calls; advising the requester of referrals to other Air Force units or government activities; involves a non-Air Force submitter, etc.).

AP2.3.2.4. A release letter to the requester, forwarding releasable responsive records with a bill (if appropriate).

AP2.3.2.5. A "no records" response letter to the requester if there are no responsive records, or, a denial letter, if any responsive records are withheld from release. FOIA Managers may sign "no records" or "requested format not available" responses; they may also sign a letter that advises a requester the fee category sought was not determined to be appropriate, or that a fee waiver/fee reduction request was disapproved, or that a request for expedited processing has been denied. An IDA must sign any letter or document withholding responsive records. When denying records, you must tell the requester, in writing: the name and title or position of the official who made the denial determination, the basis for the denial in enough detail to permit the requester to make a decision concerning appeal, and the FOIA exemptions on which the denial is based. The denial letter must include a brief statement describing what the exemptions cover. When the initial denial is based (in whole or in part) on a security classification, this explanation should include a summary of the applicable executive order criteria for classification, as well as an explanation of how those criteria apply to the particular record in question. Estimate the volume of the records denied and provide this estimate to the requester, unless providing such an estimate would harm an interest protected by an exemption of the FOIA. This estimate should be in number of pages or, for records in other media, in some

other reasonable form of estimation, unless the volume is otherwise indicated through deletions on records disclosed in part. Indicate the size and location of the redactions on the records released. You must also tell the requester how he/she can appeal the denial and provide Air Force FOIA Public Liaison and Office of Government Information Services contact information.

AP2.3.3. Contacts with Non-Air Force Submitters of Data. Before releasing data (information or records) submitted from outside the Air Force, determine whether you need to write to the submitter of the data for their views on releasability of their data. In many cases, this non-Air Force data may fall under FOIA Exemption 4. If it appears you must contact the submitter of the data, advise the requester in writing that you must give the submitter of the data the opportunity to comment before the Air Force decides whether to release the information. Give the submitter 5 working days to object to release and provide justification for withholding the documents. If the submitter does not respond, advise the submitter in writing that you have not received a reply and plan to release the records. Provide the submitter with the reasons the Air Force will release the records, and give the submitter your expected release date (5 working days from the date of your letter). This permits the submitter time to seek a temporary restraining order in federal court, if they can convince the judge to issue such an order. See Appendix 1 for samples of language to use in Air Force letters to both the FOIA requester and nongovernment submitters. Remember to include a copy of Appendix 3 as an attachment to the letter sent to the nongovernment submitter.

AP2.3.3.1. The notice requirements of this section need not be followed if the Air Force determines that the information should not be disclosed, the information has been lawfully published or officially made available to the public, or disclosure of the information is required by law.

AP2.3.3.2. (Added)(AF) If the submitter objects to release of the records, but the Air Force disclosure authority considers the records releasable, tell the submitter before releasing the data. Include in the letter to the submitter a brief explanation and a specific release date at least 5 working days from the date of the letter. This permits the submitter time to seek a temporary restraining order in federal court, if they can convince the judge to issue such an order. Advise the submitter once a determination is made that release of the data is required under the FOIA, failure to oppose the proposed release will lead to release of submitted data. Also advise the requester such a release under the FOIA will result in the released information entering the public domain, and that subsequent requests for the same information will be answered without any formal coordination between the Air Force and the submitter, unless the information is later amended, changed, or modified. A person equal to, or higher in rank than, the denial authority makes the final decision to disclose responsive records over the submitter's objection.

AP2.3.3.3. When a previously released contract document has been modified, any contract documents not in existence at the time of an earlier FOIA request that are responsive to a later FOIA request for the same contract, will be processed as a first-time FOIA request for those newly created documents. Notify the nongovernment submitter of the pending FOIA

action, and give them the same opportunity to respond as is detailed above. Passage of a significant period of time since the prior FOIA release can also require Air Force elements to comply with the notice requirements in this paragraph.

AP2.4. Denying All or Part of a Request. When responsive records are withheld from release (denied), the appropriate offices must prepare a denial package for the IDA. Air Force elements must send the request, related documents, and responsive records through their IDA FOIA office to the IDA for a decision. The denial package must include:

AP2.4.1. The FOIA request and any modifications by the requester.

AP2.4.2. A copy of the responsive records, including both records that may be released and records recommended for denial.

AP2.4.3. Written recommendations from the OPR, and an Air Force attorney.

AP2.4.4. The exemptions cited and a discussion of how the records qualify for withholding under the FOIA.

AP2.4.4.1. This discussion should also include the reasons for denial: to deny release of responsive records requested under the FOIA, it must be determined that disclosure of the records would result in a foreseeable harm to an interest protected by a FOIA exemption (or exemptions), that the record is exempt from release under one or more of the exemptions of the FOIA, and that a discretionary release is not appropriate.

AP2.4.5. Any collateral documents that relate to the requested records. For example:

AP2.4.5.1. If the requested records came from a non-Air Force or non-U.S. Federal Government submitter, include any documents from the submitter that relate to the release or denial of the requested records. If unsure of whether or not the non-Air Force or non-U.S. Federal Government submitted information is potentially exempt from release under the FOIA, contact an Air Force attorney FOIA Exemptions 3, 4, 5, 6, and 7 may apply.

AP2.4.5.2. If the requested records came from Privacy Act systems of records, include a written discussion of any Privacy Act issues.

AP2.4.5.3. If any requested records came from another Air Force element, or release of the requested records would affect another Air Force element, the FOIA RSC should coordinate with that other element. If the FOIA request is not completely referred to the other element, include documents from that element.

AP2.4.5.4. If any of the requested records are classified, include a written certification from a classification authority or declassification authority stating the data was properly classified originally, that it remains properly classified (per Executive Order 13526), and, if applicable, that no reasonably segregable portions can be released (see paragraph C3.2.1.1).

AP2.5. FOIA Appeal Actions

AP2.5.1. If an IDA, or a FOIA office responding on behalf of an IDA, withholds a record from release because they determine the record is exempt under one or more of the exemptions to the FOIA, the requester may appeal that decision, in writing, to the Secretary of the Air Force. The appeal should be accompanied by a copy of the denial letter. FOIA appeals should be postmarked within 90 calendar days after the date of the denial letter, and should contain the reasons the requester disagrees with the initial denial. Late appeals may be rejected, either by the element initially processing the FOIA appeal, or by subsequent denial authorities, if the requester does not provide adequate justification for the delay. Appeal procedures also apply to the denial of a fee category claim by a requester, denial of a request for waiver or reduction of fees, disputes regarding fee estimates, review on an expedited basis of a determination not to grant expedited access to agency records, and for "no record" or "requested format not available" determinations when the requester considers such responses adverse in nature.

AP2.5.2. Coordinate appeals with an Air Force attorney (and the OPR, if appropriate) so they can consider factual and legal arguments raised in the appeal, and can prepare written assessments of issues raised in the appeal to assist the IDA in considering the appeal. FOIA RSC and SAF/AAL (for OPR at HQ USAF and SAF), send all appeals to the Secretary of the Air Force through Air Force Legal Operations Agency, General Litigation Division (AFLOA /JACL) for consideration, unless the IDA has reconsidered the initial denial action, and granted the appeal.

AP2.5.3. If a requester appeals a "no records" determination, organizations must search again or verify the adequacy of their first search (for example, if a second search would be fruitless, the organization may include a signed statement from either the records OPR or the FOIA Manager detailing why another search was not practical). The appeal package must include documents (to include a certification from the records OPR) that show how the organization tried to find responsive records. In the event a requester sues the Air Force to contest a determination that no responsive records exist, formal affidavits will be required to support the adequacy of any searches conducted.

AP2.5.4. General Administrative Matters. FOIA requesters may ultimately sue the Air Force in federal court if they are dissatisfied with adverse determinations. In these suits, the contents of the administrative appeal file are evaluated to determine whether the Air Force complied with the FOIA and its own guidance. Improper or inadequate appeal files make defending these cases problematic. Include all the documents related to the requester's FOIA action in the appeal file. If appeal file documents are sensitive, or are classified up to the SECRET level, send them separately to AFLOA/JACL, 1500 West Perimeter Road, Suite 1370 Joint Base Andrews, MD 20762. Make separate arrangements with AFLOA/JACL for processing classified appeal file documents TOP SECRET or higher. Cover letters on appeal packages need to list all attachments. If a FOIA action is complicated, a chronology of events helps reviewers understand what happened in the course of the request and appeal. If an appeal file does not include the documentation described below, include the tab, and insert a page marked "not applicable," "N/A," or

"not used." DO NOT renumber the tabs and move the other items up. If any part of the requester's appeal is denied, the appeal package must include a signed statement by the IDA, demonstrating that the IDA considered and rejected the requester's arguments, and the basis for that decision. This may be a separate memorandum, an endorsement on a legal opinion or OPR opinion, or the cover letter which forwards the appeal for final determination. Include in the cover letter forwarding the appeal to the Secretary of the Air Force the name, phone number and e-mail address (if any) of the person to contact about the appeal. The order and contents of appeal file attachments follow.

AP2.5.4.1. Tab 1, the original appeal letter and envelope.

AP2.5.4.2. Tab 2, the initial FOIA request, any modifications of the request by the requester or any other communications from the requester, in chronological order.

AP2.5.4.3. Tab 3, the denial letter.

AP2.5.4.4. Tab 4, copies of all records already released to include clean/un-redacted copy. An index of released documents may be helpful, if there are a number of items. If the records released are — massive [which means "several cubic feet"] and AFLOA/JACL agrees, an index or description of the records may be provided in place of the released records. Do not send appeal files without copies of released records without the express agreement of AFLOA/JACL. Usually AFLOA/JACL requires all the released records in appeal files. If the released records are not sent to AFLOA/JACL when a FOIA requester has appealed a partial denial, retain a copy of what was released for 6 years.

AP2.5.4.5. Tab 5, copies of all administrative processing documents, including extension letters, search descriptions, and initial OPR recommendations about the request, in chronological order.

AP2.5.4.6. Tab 6, copies of the denied records or portions marked to show what was withheld. If your organization uses a single set of highlighted records (to show items redacted from records released to the requester), ensure the records are legible and insert a page in either Tab 4 or Tab 6 stating all records are contained in the other tab. An index of denied documents may be helpful, if there are a number of items. If the records denied are "massive" [which means "several cubic feet"] and AFLOA/JACL agrees, an index or description of the records may be provided in place of the denied records. Do not send appeal files without copies of denied records without the express agreement of AFLOA/JACL. Usually AFLOA/JACL requires all the denied records in appeal files. If the denied records are not sent to AFLOA/JACL, when a FOIA requester has appealed a denial, retain a copy of what was denied for 6 years.

AP2.5.4.7. Tab 7, place all legal opinions, in chronological order, in this tab. Include a point-by-point discussion of factual and legal arguments in the requester's appeal (prepared by an Air Force attorney and/or the OPR). If the IDA does not state in the cover letter he/she signed that he/she considered and rejected the requester's arguments and asserting the basis for that decision (e.g., the IDA concurs in the legal and/or OPR

assessments of the requester's arguments), include a signed, written statement containing the same information from the IDA in this tab, either as a separate document or an endorsement to a legal or OPR assessment. Include any explanation of the decision-making process for intra-agency documents denied under the deliberative process privilege and how the denied material fits into that process (if applicable).

**(Added)(AF) AP3. APPENDIX 3
REQUIREMENT OF TITLE 5 UNITED STATES CODE SECTION 552(b)(4)
TO SUBMITTERS OF NONGOVERNMENT CONTRACT-RELATED INFORMATION**

AP3.1. General. The FOIA requires federal agencies to provide their records, except those specifically exempted, for the public to inspect and copy. Section (b) of the Act lists nine exemptions that are the only basis for withholding records from the public.

AP3.1.1. In this case, the fourth exemption, 5 U.S.C. 552(b)(4), may apply to records or information the Air Force maintains. Under this exemption, agencies must withhold trade secrets and commercial or financial information they obtained from a person or organization outside the government that is privileged or confidential. This may include information provided and received during the contracting process with the understanding that the Air Force will keep it privileged or confidential.

AP3.1.2. Commercial or financial matter is “confidential” and exempt if its release would likely:

AP3.1.2.1. Impair the government’s ability to obtain necessary information in the future.

AP3.1.2.2. Substantially harm the source’s competitive position or impair some other legitimate government interest such as compliance and program effectiveness.

AP3.2. Applicability of Exemption. The exemption may be used to protect information provided by a nongovernment submitter when public disclosure would likely cause substantial harm to its competitive position. Examples of information that may qualify for this exemption include:

AP3.2.1. Commercial or financial information received in confidence with loans, bids, contracts, or proposals, as well as other information received in confidence or privileged, such as trade secrets, inventions, discoveries, or other proprietary data. (NOTE: Certain proprietary and source selection information may also fall under exemption (b)(3), under the provisions of 10 U.S.C. 2305(g) or 41 USC 423, if statutory requirements are met.)

AP3.2.2. Statistical data and commercial or financial information concerning contract performance, income, profits, losses, and expenditures, offered and received in confidence from a contractor or potential contractor.

AP3.2.3. Personal statements given during inspections, investigations, or audits, received and kept in confidence because they reveal trade secrets or commercial or financial information, normally considered confidential or privileged.

AP3.2.4. Financial data that private employers give in confidence for local wage surveys used to set and adjust pay schedules for the prevailing wage rate of DoD employees.

AP3.2.5. Information about scientific and manufacturing processes or developments that is technical or scientific or other information submitted with a research grant application, or with a report while research is in progress.

AP3.2.6. Technical or scientific data a contractor or subcontractor develops entirely at private expense, and technical or scientific data developed partly with Federal funds and partly with private funds, in which the contractor or subcontractor retains legitimate proprietary interests per Title 10 U.S.C. 2320-2321 and Title 48 CFR.

AP3.2.7. Computer software copyrighted under the Copyright Act of 1976 (Title 17 U.S.C. 106), the disclosure of which would adversely impact its potential market value.

AP3.2.8. Information voluntarily submitted, if the submitter would not normally release such information to the public.

AP3.3. Submitter's Written Response. If release of the requested material would prejudice your commercial interests, give detailed written reasons that identify the specific information and the competitive harm public release will cause to you, your organization, or your business. The Act requires the Air Force to provide any reasonably segregable part of a record after deleting exempt portions. If deleting key words or phrases would adequately protect your interests, advise us in writing which portions you believe we can safely release, and which portions you believe we need to withhold from release. If you do not provide details on the probability of substantial harm to your competitive position or other commercial interests, which would be caused by releasing your material to the requester, we may be required to release the information. Records qualify for protection on a case by case basis.

AP3.4. Pricing Information. Generally, the prices a contractor charges the government for goods or services would be released under the FOIA. Examples of releasable data include (a) the winning bid submitted in response to an invitation for bids (IFB), (b) amounts actually paid by the government under a contract, and (c) line item prices, contract award price, and modifications to a contract. Unit prices contained in a contract award are considered releasable as part of the post award notification procedure prescribed by the Title 48 CFR. Only winning contractor information is releasable under 10 USC § 2305(g).