



ADMINISTRATION AND  
MANAGEMENT

OFFICE OF THE SECRETARY OF DEFENSE

1950 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1950

AUG 3 2012

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS  
CHAIRMAN OF THE JOINT CHIEFS OF STAFF  
UNDER SECRETARIES OF DEFENSE  
DEPUTY CHIEF MANAGEMENT OFFICER  
COMMANDERS OF THE COMBATANT COMMANDS  
CHIEF OF THE NATIONAL GUARD BUREAU  
DIRECTOR, COST ASSESSMENT AND PROGRAM EVALUATION  
DIRECTOR, OPERATIONAL TEST AND EVALUATION  
GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE  
INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE  
ASSISTANT SECRETARIES OF DEFENSE  
DEPARTMENT OF DEFENSE CHIEF INFORMATION OFFICER  
ASSISTANTS TO THE SECRETARY OF DEFENSE  
DIRECTOR, NET ASSESSMENT  
DIRECTORS OF THE DEFENSE AGENCIES  
DIRECTORS OF THE DoD FIELD ACTIVITIES

SUBJECT: Processing of Freedom of Information Act (FOIA) Exemption Determinations  
Pursuant to 10 USC §130e and 10 USC § 2254a

On May 2, 2012, the Deputy Secretary of Defense delegated to the Director of Administration and Management (DA&M) the authority to exempt certain Department of Defense (DoD) information from release under Exemption 3 of the FOIA (attached). Specifically, 10 USC §130e permits the DA&M to exempt critical infrastructure security information, and 10 USC §2254a permits the DA&M to exempt data files of the military flight operations quality assurance system.

This memorandum provides guidance to DoD Components to request a determination by the DA&M that information meets the criteria to exempt it from release pursuant to these two statutes. When DoD Components identify information responsive to a FOIA request and determine that it qualifies for withholding under either of these two statutes, they shall submit a package to the DA&M recommending exemption of the requested information. The package must, at a minimum, contain:

- A copy of the initial FOIA request.
- A copy of the responsive documents. The documents should be in electronic (.pdf) format with only the information recommended for exemption under these statutes clearly marked as such. Do not indicate information that will be denied under any other exemption.
- Details on how the information recommended for exemption meets the threshold of qualifying as critical infrastructure security information or as a data file of the military flight operations quality assurance system.



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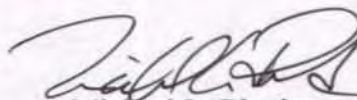
- A thorough explanation of the harm that could reasonably result if the information is released. This explanation must be as specific as possible to allow the DA&M to make a fully informed determination. An explanation could be an attachment signed by a subject matter expert. All explanations and statements of basis for determination should be considered publicly releasable as they will be made available on the Defense Freedom of Information Policy Office (DFOIPO) website.
- Any documentation of the public interest in the release of the information. This could be provided to the Component by the FOIA requester or other interested parties supporting the request.

When the package is ready, the DoD Component will contact DFOIPO at 571-372-0462 or [dfoipo@whs.mil](mailto:dfoipo@whs.mil) for delivery instructions based on package classification. Upon receipt of the package, DFOIPO will:

- Review it to determine if the Component's recommendations meet the requirements of the FOIA, the Exemption 3 statutes, and relevant case law.
- Contact the FOIA requester advising him/her that the Component is asking the DA&M to exempt information responsive to his/her FOIA request. The FOIA requester will be provided with an opportunity to provide a statement to the DA&M detailing the public interest in the release of the information. The requester also will be advised that this statement will be made available to the public (minus personally identifying information such as a home mailing address) as part of the requirement to make publicly available the statement of the basis for the determination.
- Prepare all documentation for review by selected OSD Components and the DoD Office of General Counsel (OGC). The package will be returned to the Component for further processing and resubmission should any deficiencies be identified.
- Once the review is complete, forward the package to the DA&M for determination.

Once made, DFOIPO will provide the DA&M's determination to the Component. The Component will provide a copy of this determination to the requester with the final response. The Component shall notify the requester of the Component's initial denial authority (IDA) (the DA&M should not be indicated as the IDA) and the requester's right to appeal to the Component's appellate authority.

To meet the requirement for the DA&M to publicly release the exemption determinations and the statements of the basis for the determinations, DFOIPO will post this information on the DFOIPO website. This guidance is effective immediately and will be incorporated into DoD 5400.07-M, DoD Freedom of Information Act (FOIA) Program. My point of contact for this action is Jim Hogan, 571-243-0462, or [dfoipo@whs.mil](mailto:dfoipo@whs.mil).



Michael L. Rhodes  
Director

Attachment:  
As stated





DEPUTY SECRETARY OF DEFENSE  
1010 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1010

MAY 02 2012

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SUBJECT: Delegation of Authority to Exempt Information Under the Freedom of Information Act (FOIA)

The authority to exempt information under the FOIA (section 552 of title 5, U.S.C.) pursuant to sections 130e and 2254a of title 10, United States Code, is delegated to the Director of Administration and Management (DA&M). This delegation of authority shall be incorporated in the chartering Directive for DA&M, DoD Directive 5105.53.



OSD002180-12