

DEPARTMENT OF DEFENSE
Office of the Secretary
32 CFR Part 296
National Reconnaissance Office
Freedom of Information Act Program Regulation

AGENCY: National Reconnaissance Office, DoD.

ACTION: Final rule.

SUMMARY: This final rule establishes the National Reconnaissance Office (NRO) regulation governing the disclosure of information under the Freedom of Information Act. This part is reissued pursuant to the Department of Defense rule, which implements the Freedom of Information Act and it conforms to the Department's rule and schedule. As a component of the Department of Defense, the Department rules and schedules with respect to the Freedom of Information Act, as amended, will also be the policy of the NRO.

Effective Date: October 20, 1999.

FOR FURTHER INFORMATION CONTACT: Barbara Friemann, Chief, Information Access and Release Center, (703) 808-5029, Reading Room Appointments (703) 808-2474 or (703) 808-5500.

SUPPLEMENTARY INFORMATION: The NRO published a final rule of this part on November 16, 1993 (58 FR 60382). This rule does not constitute a significant regulatory action within the meaning of Executive Order 12866. Neither the requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612), nor the reporting or record-keeping requirements under the Paperwork Reduction Act of 1995 (Pub. L. 104-13) apply. It is hereby certified that this final rule does not exert a significant economic impact nor impose new requirements on a number of small entities. This determination is made based upon the fact that the rule merely codifies the procedural aspects of the NRO Freedom of Information Act Program, as amended by the "Electronic Freedom of Information Act Amendment of 1996". It includes guidance on how and from whom to request information pertaining to the NRO.

List of Subjects 32 CFR Part 296

Freedom of information.

Accordingly, 32 CFR part 296 is revised to read as follows

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PART 296--NATIONAL RECONNAISSANCE OFFICE FREEDOM OF INFORMATION ACT PROGRAM REGULATION

Sec.

296.1 Purpose.

296.2 Definitions.

296.3 Indexes.

296.4 Procedures for request of records.

296.5 Appeals.

296.6 Reading room.

Authority: 5 U.S.C. 552, as amended.

Sec. 296.1 Purpose.

The purpose of this part is to provide policies and procedures for the National Reconnaissance Office (NRO) implementation of the Freedom of Information Act (5 U.S.C. 552 as amended) (FOIA), and to promote uniformity in the NRO FOIA program.

Sec. 296.2 Definitions.

The terms used in this part, with the exception of the following, are defined in 32 CFR part 286:

- (a) Freedom of Information Act appellate authority. The Chief of Staff, NRO.
- (b) Initial denial authority. The Chief, Information Access & Release Center NRO.

Sec. 296.3 Indexes.

(a) The NRO does not originate final orders, opinions, statements of policy, interpretations, staff manuals or instructions that affect a member of the public of the type covered by the indexing requirement of 5 U.S.C. 552(a)(2). The Director, NRO, has therefore determined, pursuant to pertinent statutory and executive order requirements, that it is unnecessary and impracticable to publish an index of the type required by 5 U.S.C. 552(a)(2), except the index noted in paragraph (b) of this section.

(b) A general index of FOIA-processed (a)(2) records shall be made available to the public, both in hard copy and electronically by December 31, 1999.

Sec. 296.4 Procedures for request of records.

(a) Requests. Requests for access to records of the National Reconnaissance Office may be filed by mail or FAX addressed to the Chief, Information Access and Release Center, National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151-1715, FAX Number (703) 808-5082. Requests need not be made on any special form but must be by letter or FAX or other written statement identifying the request as a Freedom of Information Act request and setting forth sufficient information reasonably describing the requested record. All requests should contain a willingness to pay assessable FOIA fees.

(b) Date of acceptance. The requestor shall be promptly informed by letter of the date of

acceptance of the request. The search conducted pursuant to that request shall be for records in existence as of and through the acceptance date.

(c) Determination and notification. When the requested record has been located and identified, the Initial Denial Authority shall determine whether the record is one which, consistent with statutory requirements, executive orders and appropriate directives, may be released or may contain information that is exempt under the provisions of 5 U.S.C. 552. Normally, the Initial Denial Authority shall notify the requestor of the determination within 20 working days of the receipt of the request.

(d) Multi-track processing. The NRO has 3 queues in which requests may be processed when a significant number of pending requests prevents a response within 20 working days, all based on the date of receipt, first-in first-out, and the amount of work, time, and volume involved in processing the requests.

(See subparagraph C1.5.4.2. of DoD 5400.7-R \1\, Sept 1998).The queues are:

\1\ Copies may be obtained via internet at [http:// web7.whs.osd.mil/corres/htm](http://web7.whs.osd.mil/corres/htm).

(1) Simple. Those requests which are easily handled and processed.

(2) Complex. Those requests which are complicated by multiple searches, co-ordinations, consultations, volume etc.

(3) Expedited. Expedited processing shall be granted to a requestor after the requestor asks for and demonstrates a compelling need for the information (paragraph C1.5.4.3. of DoD 5400.7-R)

(e) Extension of response time. In unusual circumstances when additional time is needed to respond, the Initial Denial Authority shall notify the requestor in writing of the reasons therefore, and an anticipated date, not to exceed 10 additional working days, on which a determination is expected to be dispatched. The Initial Denial Authority will normally send this notification within 20 working days from receipt of the request. Should it be determined that this 10 additional working days cannot be met, the requestor shall be notified and offered the opportunity to limit or narrow the scope of the request in order to facilitate faster processing, or to arrange an alternative time for processing the request (paragraph C1.5.2.6. of DoD 5400.7-R)

(f) Fees.

(1) General. As a component of the Department of Defense, the applicable published Department rules and schedules with respect to the schedule of fees chargeable and waiver of fees will also be the policy of NRO. See 32 CFR 286.33.

(2) Advance payments. (i) Where a total fee to be assessed is estimated to exceed \$250, advance payment of the estimated fee will be required before processing of the request, except where assurances of full payment are received from a requestor with a history of prompt payment. Where a requestor has previously failed to pay a fee within 30 calendar days of the date of the billing, the requestor will be required to pay the full amount owed, plus any applicable interest, or demonstrate that he or she has paid the fee, as well as make an advance payment of the full amount of any estimated fee before processing of a new or pending request continues.

(ii) For all other requests, advance payment, i.e., a payment made before work is commenced, will not be required. Payment for work already completed is not an advance payment. Responses will not be held pending receipt of fees from requestors with a history of prompt payment. Fees

should be paid by certified check or postal money order forwarded to the Chief, Information Access and Release Center (IARC) and made payable to the Treasurer of the United States.

Sec. 296.5 Appeals.

Any person denied access to records, denied a fee waiver, involved in a dispute regarding fee estimates, or who considers a no record determination, or any determination to be adverse in nature, may, within 60 days after notification of such denial, file an appeal to the Freedom of Information Act Appellate Authority, National Reconnaissance Office. Such an appeal shall be in writing addressed to the Chief, Information Access and Release Center, National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151-1715, should reference the initial denial, and shall contain the basis for disagreement with the initial denial. The Freedom of Information Act Appellate Authority shall normally make a final determination on an appeal within 20 working days after receipt of the appeal.

Sec. 296.6 Reading room.

(a) The NRO shall provide a reading room equipped with hard copy and electronic records as required in the "Electronic Freedom of Information Act Amendments of 1996". The NRO Reading Room is located at 14675 Lee Road, Chantilly VA, 20151-1715 and is open weekdays only from 8:00 am until

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4:00 p.m. Requestors must call for an appointment twenty-four (24) hours in advance so that optimum customer service can be provided. (703) 808-5029. Fees will be charged for duplication of hard copy records at \$.15 per page after the first 100 pages. Softcopy media provided to visitors is assessed as follows:

- (1) 5.25" Floppy diskette \$0.50
- (2) 3.5" Floppy diskette \$0.50
- (3) CD-R Media \$3.75
- (4) Video Tape \$4.00.

(b) The NRO FOIA Electronic Reading Room is located on the NRO Home Page: www.nro.odci.gov.

Dated: December 9, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

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