

**DEFENSE THREAT REDUCTION AGENCY
FREEDOM OF INFORMATION ACT
HANDBOOK**



JULY 2010

DTRA FREEDOM OF INFORMATION AND PRIVACY OFFICE

INTRODUCTION

This handbook is provided to assist in submitting Freedom of Information Act (FOIA) requests to the Defense Threat Reduction Agency (DTRA) for records created by DTRA. It will provide a brief description of your rights and the manner in which DTRA will respond to FOIA requests. The information contained herein is not intended to be definitive or exhaustive.

The FOIA, 5 U.S.C. § 552; The Department of Defense (DoD) Regulation 5400.7-R, “DoD FOIA Program; and the DTRA Instruction 5400.07, FOIA Program, governs how requests will be processed within DTRA. The DoD Regulation can be found at Chapter 32 Part 286 of the Code of Federal Regulations, which can be found in most libraries or on the World Wide Web by entering: <http://www.defenselink.mil/> select “Publications” then FOIA and then (DoD) Freedom of Information Act Program Regulation. The Freedom of Information Act Guide and Privacy Overview may also be purchased from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161. The Department of Defense’s FOIA program is decentralized among the several “DoD Components,” which operate their own FOIA offices and respond directly to the public for their own records. DTRA is a component of the Department of Defense, therefore if you desire records created and maintained by DTRA, please write to The Defense Threat Reduction Agency, Freedom of Information and Privacy Office, 8725 John J. Kingman Road, MS 6201, Fort Belvoir, VA 22060-6201. A listing of all Federal agency FOIA contacts may be found at <http://www.usdoj.gov/04foia/foiacontacts.htm>.

Frequently Asked Questions

➤ What is the Freedom of Information Act?

The FOIA is a Federal law that establishes the public’s right to request existing records from Federal government agencies, except to the extent that such records, or portions of them are protected from disclosure by one of nine exemptions or by one of three special law enforcement record exclusions.

➤ Who can file a FOIA request?

Any “person” can file a FOIA request, including U.S. citizens, foreign nationals, organizations, universities, businesses, and state and local governments. There are two exceptions to this “any person” standard. Fugitives from justice may not request records that relate to the requester’s fugitive status. The Intelligence Authorization Act of 2003, precludes agencies of the intelligence community from

disclosing records to FOIA requests made by foreign governments or international governmental organizations.

- What agencies are subject to the FOIA and what type of information can be requested?

The FOIA's scope includes Federal Executive Branch Departments, agencies, and offices, Federal regulatory agencies, and Federal corporations. Those not subject to the FOIA include, Congress, the Federal Courts, and parts of the Executive Office of the President. State and local governments are also not subject to the Federal FOIA, however some states have their own equivalent access laws for state records.

- What is a record?

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

- Can questions be asked in a request under the FOIA?

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

- How do I file a FOIA request?

- A sample request letter can be found at the end of this handbook. Label your request "Freedom of Information Act Request," preferably within the request letter and on the envelope, and address the request to DTRA at the address provided above. You may also fax your request to us at (703) 767-3623, by electronic mail at efoia@dtra.mil, or by calling the DTRA FOIA hotline at (703) 767-1792.

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

- Describe the specific records you are requesting in enough detail so that they can be located with a reasonable amount of effort. Generally, a record is reasonably described when the description contains sufficient file-related information (type of document, title, subject area, date of creation, originator, etc.); or the request

contains enough event-related information (date and circumstances surrounding the event the record covers) to permit the conduct of an organized, nonrandom search.

➤ Can I appeal a denial?

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

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

The Freedom of Information Act requires an agency to make an initial determination to release or deny a record within 20 working days after receipt of the request by the official who is designated to respond, however agencies are not required to release records within the statutory time limit. DTRA processes requests in order by date of receipt and according to their complexity. These are called simple and complex queuing tracks. However, if unusual circumstances exist as described in 5 U.S.C. 552(a) FOIA, DTRA may be unable to answer all requests within the statute's time requirements. Therefore, requests are processed on a first-in, first-out basis. Under certain conditions, expedited access may be granted if there is a compelling need, such as a threat to life and safety or if a person engaged in disseminating information has an urgency to inform the public on actual or alleged Federal Government activity.

Reasons for not releasing a record

DTRA may not release a record when:

- A reasonable search of files failed to identify responsive records.
- The requested documents may fall under the purview of another DoD Component, or Federal Agency.
- The request is withdrawn by the requester.
- The requester is unwilling to pay fees associated with a request; the requester is past due in the payment of fees from a previous FOIA request; or the requester disagrees with the fee estimate.

- A record has not been described with sufficient particularity to enable DTRA to locate it by conducting a reasonable search.
- The requester has failed unreasonable to comply with procedural requirements, other than fee-related, imposed by DoD 5400.7-R or DTRA Instruction 5400.07, privacy act regulations.
- The information requested is not a record within the meaning of the FOIA and the DoD and/or DTRA regulation.
- The request is a duplicate request (e.g. a requester ask for the same information more than once). This includes identical requests received via different means (e.g. electronic mail, facsimile, mail, courier) at the same or different times.
- Any other reason a requester does not comply with published rules other than those outlined above.
- The record is denied in whole or in part in accordance with procedures set forth in the FOIA.

FOIA Exemptions

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

- (b)(1)—records currently and properly classified in the interest of national security;
- (b)(2)—records related solely to internal personnel rules and practices;
- (b)(3)—records protected by another law;
- (b)(4)—trade secrets and commercial or financial information;
- (b)(5)—internal records that are deliberative in nature;
- (b)(6)—records related to personal privacy;
- (b)(7)—investigatory records or information compiled for law enforcement;
- (b)(8)—financial institutions; and

- (b)(9)— geological and geophysical information concerning wells.

Fees associated with a FOIA request

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

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

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

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

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

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

All requesters should state their willingness to pay fees regardless of the fee category; however, this does not mean you will be charged fees. Release of technical data requires the all requesters to pay costs attributed to search, duplication and review of records. Fee waivers may be granted when disclosure of the records is in the public interest because it

is likely to contribute significantly to public understanding of the operations or activities of the government.

The following factors are weighed in making a fee waiver determination:

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

Reading Room

The Defense Threat Reduction Agency Reading Room may be found at www.dtra.mil. Reading room records described in 5 U.S.C. (a)(2), The FOIA, may be made available upon request. The Reading Room is open to the general public from 8:30 a.m. - 4:00 p.m. Monday through Friday (excluding Federal holidays). For more information regarding the reading room or to schedule an appointment, write to the Defense Threat Reduction Agency, 8725 John J. Kingman Road, Freedom of Information and Privacy Office, Fort Belvoir, VA 22060-6201 or call (703) 767- 1792.

The FOIA has been amended several times since being enacted in 1966, to continue to accommodate both technology advancements and society's growing interests. We trust this information will be helpful to you when pursuing FOIA requests with The Defense Threat Reduction Agency. If you have any questions or comments you may send them to DTRA at Defense Threat Reduction Agency, 8725 John J. Kingman Road, Freedom of Information and Privacy Office, Fort Belvoir, VA 22060-6201 or call 703 767-1792.

Chief FOIA Public Liason

Chief, FOIA Public Liaison
ATTN: Mr. Richard Coles, DIR-PA
8725 John J. Kingman Road MSC 6201
Fort Belvoir, VA 22060-6201
foia_public_liason@dtra.mil

Sample FOIA Request Letter

DTRA
[FOIA Officer]
8725 John J. Kingman Road
Fort Belvoir, VA 22060-6201

Dear Sir/Madame:

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

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

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

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

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

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

I am willing to pay fees for this request up to a maximum of \$_____. If you estimate that the fees will exceed this limit, please inform me first. [optional] I request a waiver of fees for this request because disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the DTRA and is not primarily in my commercial interest. [Include details about how the requested information will be disseminated by you to the general public.]

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

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

U.S. Government Official Web Portal

<http://www.firstgov.gov>

Department of Justice FOIA & Privacy Reference Material

<http://www.usdoj.gov/oip/oip.html>

Department of Defense FOIA Home Page

<http://www.defenselink.mil/pubs/foi/>

Legislation/Congressional Documents

<http://thomas.loc.gov/>

ASAP Home Page

<http://www.AccessPro.org>

Department of Defense Procurement Data

<http://web1.whs.osd.mil/peidhome/PEIDHOME.HTM>

Department of Defense Privacy Act Home Page

<http://www.defenselink.mil/privacy/>

Federal Citizen Information Center

http://www.pueblo.gsa.gov/textver/t_main.htm

National Archives and Records Administration

<http://www.archives.gov/>

Government Printing Office On-Line Databases

<http://www.gpoaccess.gov/multidb.html>