



Deputy Chief Management Officer
of the Department of Defense

**ADMINISTRATIVE
INSTRUCTION**

NUMBER 108

June 23, 2016

FOID, WHS

SUBJECT: OSD and Joint Staff (JS) Freedom of Information Act (FOIA) Program

References: See Enclosure 1

1. **PURPOSE.** This administrative instruction (AI) reissues AI 108 (Reference (a)) to implement DoD policy, assign responsibilities, and prescribe procedures for the effective administration of the FOIA Program in the OSD and the JS by the Freedom of Information Division (FOID), in accordance with the guidance in DoD Directive (DoDD) 5400.07 (Reference (b)) and the authority in DoDD 5110.04 (Reference (c)) and DoD Instruction 5025.01 (Reference (d)).

2. **APPLICABILITY.** This AI applies to OSD, the Office of the Chairman of the Joint Chiefs of Staff and the JS, and those Defense Agencies, DoD Field Activities, and other Defense organizations listed in the Figure (referred to collectively in this AI as the “OSD and JS Components”).

Figure. Defense Agencies, DoD Field Activities, and Other Defense Organizations Provided FOIA Support By FOID

Defense Acquisition University
Defense Advanced Research Projects Agency
Defense Equal Opportunity Management Institute
Defense Legal Services Agency
Defense Microelectronics Activity
Defense Media Activity
Defense POW/MIA Accounting Agency
Defense Security Cooperation Agency
Defense Technology Security Administration

Figure (Continued). Defense Agencies, DoD Field Activities, and Other Defense Organizations Provided FOIA Support By FOID

Defense Travel Management Office
DoD Consolidated Adjudications Facility
DoD Human Resources Activity
DoD Test Resource Management Center
Joint Improvised-Threat Defeat Agency
Missile Defense Agency
National Defense University
Office of Economic Adjustment
Pentagon Force Protection Agency
Uniformed Services University of Health Sciences
Washington Headquarters Services
White House Military Office

3. POLICY. It is DoD policy, in accordance with Reference (b), to promote transparency and accountability by:

a. Adopting a presumption in favor of disclosure in all decisions involving the FOIA.

b. Responding promptly to requests in a spirit of cooperation.

c. Taking affirmative steps to make the maximum amount of information available to the public, consistent with DoD responsibility to protect national security and other sensitive DoD information.

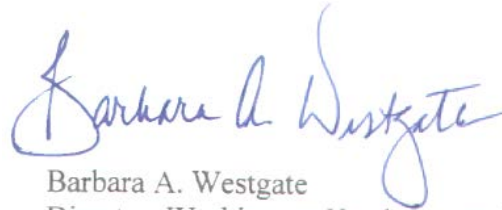
4. RESPONSIBILITIES. See Enclosure 2.

5. PROCEDURES. See Enclosure 3.

6. INFORMATION COLLECTION REQUIREMENTS. DD Form 2086, "Record of Freedom of Information Processing Cost," referred to in Enclosure 3 of this instruction, is a data source for the DoD Annual FOIA Report, which has been assigned Report Control Symbol DD-DCMO(A)1365 and is prescribed in DoD Manual 5400.07-R (Reference (e)).

7. RELEASABILITY. **Cleared for public release.** This AI is available on the Internet from the DoD Issuances Website at <http://www.dtic.mil/whs/directives>.

8. EFFECTIVE DATE. This AI is effective June 23, 2016.



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Enclosures

1. References
2. Responsibilities
3. Procedures for FOIA and FOIA/Privacy Act Requests

Glossary

ENCLOSURE 1

REFERENCES

- (a) Administrative Instruction 108, "Office of the Secretary of Defense and Joint Staff (JS) Freedom of Information Act (FOIA) Program," September 29, 2008 (hereby cancelled)
- (b) DoD Directive 5400.07, "DoD Freedom of Information Act (FOIA) Program," January 2, 2008
- (c) DoD Directive 5110.04, "Washington Headquarters Services (WHS)," March 27, 2013
- (d) DoD Instruction 5025.01, "DoD Issuances Program," June 6, 2014, as amended
- (e) DoD 5400.7-R, "DoD Freedom of Information Act Program," September 4, 1998, as amended
- (f) Title 5, United States Code
- (g) DoD 5400.11-R, "Department of Defense Privacy Program," May 14, 2007
- (h) Administrative Instruction 81, "OSD/Joint Staff (JS) Privacy Program," November 20, 2009
- (i) DoD Manual 5200.01, "DoD Information Security Program," February 24, 2012, as amended
- (j) Executive Order 13526, "Classified National Security Information," December 29, 2009

ENCLOSURE 2

RESPONSIBILITIES

1. CHIEF, FOID, EXECUTIVE SERVICES DIRECTORATE, WASHINGTON HEADQUARTERS SERVICES (WHS). Under the authority, direction, and control of the Director, WHS, and through the Director, Executive Services Directorate, the Chief, FOID, organizes, directs, and manages the FOID. Additionally, the Chief, FOID:

- a. Directs and administers the FOIA Program within the OSD and JS Components.
- b. Executes policies and establishes procedures to ensure compliance with References (b) and (e).
- c. Maintains the OSD and JS FOIA Requester Service Center (RSC) in accordance with Reference (b). The RSC serves as the central point for the receipt of:
 - (1) Initial FOIA requests for agency records.
 - (2) Privacy Act requests filed in accordance with section 552a of Title 5, United States Code, also known and referred to in this AI as “the Privacy Act” (Reference (f)).
- d. Processes written requests by an individual, organization, or business for access to agency records, in accordance with References (b) and (e) and section 552 of Reference (f) (also known and referred to in this AI as the “Freedom of Information Act (FOIA)”).
- e. Processes written requests by individuals for access to agency records about themselves contained in a Privacy Act system of records, in accordance with References (e) , DoD 5400.11-R (Reference (g)), AI 81 (Reference (h)), and the Privacy Act.
- f. Forwards requests for agency records from the public to the OSD and JS Components having possession, control, or equity in the requested records for action.
- g. Responds to FOIA and Privacy Act requests based on release determinations provided by the OSD and JS Components and other federal agencies and their components having an interest or equity in the records.
- h. Maintains a document management system for the tracking of FOIA and Privacy Act requests.
- i. Conducts educational training for the OSD and JS Components on the requirements and implementation of the FOIA in accordance with Reference (e).
- j. Administers the OSD and JS FOIA RSC website.

k. Receives fees from the public, incurred in the processing of FOIA requests, for deposit in the U.S. Treasury.

l. Receives, processes, and reviews all FOIA appeals for the OSD and JS Components and provides recommendations to the appellate authority for final adjudication of these FOIA appeals. Also provides these services to the Department of Defense Education Activity, the Defense Technical Information Center, and the Combatant Commands, who operate their own RSCs.

m. Provides FOIA litigation support to the Office of the General Counsel of the Department of Defense.

2. OSD AND JS COMPONENT HEADS. The OSD and JS Component heads:

a. Process FOIA and Privacy Act requests and FOIA appeals from FOID in accordance with this AI, References (e), (g), and (h), the Privacy Act, and the FOIA.

b. Serve as the initial denial authority (IDA) for record requests in accordance with the FOIA. This responsibility may be delegated to a representative or representatives authorized to deny information, to include determinations that classified national security information is currently and properly classified.

c. Designate an office and an individual as the point of contact (POC) to manage and track all FOIA requests sent to the Component for action and act as the primary contact point for coordination with FOID. Provide written notice to FOID of delegated or changed FOIA IDAs and POCs.

d. If necessary, coordinate with the Component's assigned legal counsel on proposed denials of agency records. This legal coordination is not mandatory.

e. Provide FOID with a statutory justification for the full or partial denial of access to agency records responsive to a FOIA request and identify the specific FOIA exemptions claimed.

f. Alert FOID when the issues raised by a request are of unusual significance, potential interest to DoD leadership, precedent setting, or otherwise require special guidance from FOID.

g. Forward all FOIA requests received directly from a member of the public (i.e., "out-of-channel requests") to FOID for entry into the FOID case tracking system.

h. Establish procedures to mark record copies and notify holders of classified agency records that have been downgraded, declassified, or reclassified, in accordance with DoD Manual 5200.01 (Reference (i)), as a result of a FOIA review.

i. Include a clearly identified “FOIA” link to the OSD/JS FOIA RSC website on the Component’s principal website and at other major public entry points to direct FOIA requesters to the correct FOIA office for processing.

ENCLOSURE 3

PROCEDURES FOR FOIA REQUESTS

1. GENERAL

a. A request for access to agency records under the provisions of Reference (e) and the FOIA may be denied only upon the determination that:

(1) The requested record is exempt in accordance with the FOIA.

(2) The requested record is not held by the OSD and JS Components, resulting in a “no records” determination.

(3) The requester has failed to comply with the procedural requirements imposed by Reference (e) and the FOIA.

b. A request for agency records by an individual about themselves, whether contained in a Privacy Act system of records or other agency records, will be processed in accordance with References (g) and (h), under the provisions of the Privacy Act, the FOIA, or both.

2. PROCESSING FOIA CASES

a. FOID receives FOIA requests under the following situations:

(1) Direct requests from a member of the public asking for access to OSD and JS Components’ agency records.

(2) Referrals or consultations from DoD and non-DoD agencies that contain OSD or JS Components’ records or other agency records with OSD or JS Components’ equities.

b. A request received directly by an OSD or JS Component will be forwarded to FOID without delay for entry into the FOID case tracking system (this is known as an “out-of-channel” request.) If the Component determines that the requested agency records are held by the Component, processing the request should immediately commence.

c. Once the request has been entered into the FOID case tracking system, FOID will forward the request or referred records for action to the OSD or JS Component with responsibility or interest in the requested information. The action package will include SD Form 466, “Freedom of Information Action,” SD Form 472, “Request Information Sheet,” and DD Form 2086, “Record of Freedom of Information (FOI) Processing Costs.”

(1) The SD Form 472 and DD Form 2086 must be completed and returned to FOID when the OSD or JS Component has completed its processing of the request. Regardless of the

Component's release determination, copies of all responsive agency records will be provided to FOID, regardless of classification level. This includes sensitive compartmented information.

(2) The OSD and JS Components will conduct record searches at federal records centers or agency records holding areas (including contractor facilities that maintain OSD records) if the records are stored at these facilities. Records that have been accessioned to the National Archives and Records Administration (NARA) are considered the property of NARA and are not subject to OSD and JS Component searches.

d. OSD or JS Components may not decline a request forwarded from FOID. If the Component determines that it is not likely to possess the requested agency records, then the Component will annotate this on the SD Form 472, and, when known, identify the specific Component or other agency that may possess responsive records.

e. FOID will assign an initial estimated completion date to the OSD and JS Components for each FOIA request or referral sent for action.

(1) The tasked Component must reply to FOID by the estimated completion date with a decision to grant the request in whole or in part, to fully deny the request; or to request a modification of the estimated completion date by a specific number of additional days.

(2) Extension requests must be submitted to FOID at least 3 working days before the request's suspense date. FOID will grant extensions on a case-by-case basis, dependent upon the justification for requesting the extension.

f. If a request requires a search by an OSD or JS Component and the requested record is denied in part, two copies of the agency records will be provided to FOID, with a completed SD Form 472 and a completed DD Form 2086. One copy of the record will clearly identify the information to be redacted and denied, and the other copy will be "clean." FOID will redact the document electronically, utilizing the "clean" copy, and prepare it for release to the requester.

g. If FOID provides the OSD or JS Components with a record for review, the Component will return the record to FOID with its release recommendations explained on a completed SD Form 472, along with a completed DD Form 2086. If information is to be denied, it will be clearly identified on a copy of the record and returned to FOID.

h. Section (b) of the FOIA requires the release of segregable information not otherwise deemed exempt. If FOID determines that the information is not properly segregated, the record will be returned to the OSD or JS Component for further review.

i. Completed copies of the SD Form 472 and DD Form 2086 will be returned to FOID regardless of the determination concerning the release of records. When a denial is based on a security classification defined in Executive Order 13526 (Reference (j)), the explanation on the SD Form 472 will indicate that a current review of the record supports continued classification. That explanation also will contain the specific rationale from Reference (j) that supports the

decision for continued classification of the requested agency records. The FOIA IDA must sign the SD Form 472 for all denials of information.

j. A classified record containing unclassified information may not be denied in total under section (b)(1) of the FOIA (exemption 1) unless the unclassified information, when taken in aggregate, would reveal classified information. This determination must be made in accordance with section 1.7 of Reference (j). Denial of unclassified information not meeting that standard may be accomplished only by applying one or more of FOIA exemptions 2 through 9 of section (b) of the FOIA.

k. FOID will maintain a copy of the agency records responsive to a request, whether released, denied in full, or partially denied, in accordance with current OSD Records Disposition Schedules and NARA guidance. The OSD or JS Component providing the responsive records has overall responsibility for compliance with the NARA General Records Schedule for its systems of records, and is considered the office of record. The OSD or JS Component will retain a copy of the agency records with the records release position as it was provided to FOID.

l. Information that previously has not been disclosed to the public under proper authority may only be classified or reclassified after receipt of a request if such classification meets the requirements of section 1.7 of Reference (j) and complies with the procedures in Enclosure 4 and Section 18 of Volume 1 of Reference (i).

m. If an OSD or JS Component conducts an adequate search for a requested record and determines that no agency records could be located, that "no records" determination will be documented on the SD Form 472 with a description of what record systems were searched. The FOIA IDA must sign the completed SD Form 472 and return it, along with the DD Form 2086, to FOID.

3. PROCESSING APPEALS WITHIN THE OSD AND JS COMPONENTS

a. When a FOIA requester submits an administrative appeal concerning a request submitted to the OSD/JS RSC or a DoD Combatant Command, FOID will review the administrative case file to determine if the FOIA request was properly processed and the initial denial was in accordance with Reference (e) and the FOIA.

(1) If the initial denial is deemed proper, FOID may recommend to the appellate authority that it be upheld.

(2) If FOID recommends the initial denial not be upheld, the denied agency records will be provided to the responsible OSD or JS Component or Combatant Command for reconsideration along with a FOID proposed release recommendation. Agency records will be processed and returned to FOID in accordance with the procedures outlined in section 2 of this enclosure.

b. When an appeal involves a “no records” response to an initial FOIA request, the FOID appeals office will review the administrative case file to determine the adequacy of the initial search.

(1) If FOID determines that the initial search was inadequate, the OSD or JS Component or Combatant Command must provide additional information for a more detailed accounting of the initial search, conduct a new search, or both.

(2) If FOID determines that the search was adequate, FOID may advise the appellate authority to uphold the initial determination concerning the adequacy of the search.

c. When an appeal concerns an administrative decision such as denial of expedited processing, a fee waiver, or a fee category determination, the FOID Appeals Office will review the administrative case file along with any additional documentary evidence presented by the requester, and make a recommendation to the appellate authority for final adjudication. The FOID Appeals Office also may remand the case to the appropriate FOIA RSC for further processing.

d. In the event that the FOID Appeals Office, after coordination with appropriate OSD and JS Components or Combatant Commands, comes to a mutual agreement that the appeal should be granted, that decision can be provided to the requester without consulting the appellate authority.

GLOSSARY

PART I. ABBREVIATIONS AND ACRONYMS

AI	administrative instruction
DoDD	DoD Directive
FOIA	Freedom of Information Act
FOID	Freedom of Information Division
IDA	initial denial authority
JS	Joint Staff
NARA	National Archives and Records Administration
POC	point of contact
RSC	Requester Service Center
WHS	Washington Headquarters Services

PART II. DEFINITIONS

These terms and their definitions are for the purposes of this AI.

agency records. Records that are created or obtained by an agency, and under agency control at the time of the FOIA request. Agency records may be maintained in any format, including electronic format.

appellate authority. The designated agency official with jurisdiction to adjudicate administrative appeals of adverse determinations of initial FOIA requests.

FOIA appeal. A request by a member of the general public, made under the FOIA, asking the appellate authority to reverse an IDA decision to withhold all or part of a requested record or to deny a request for a fee waiver, reduction of fees, non-response, or expedited processing.

FOIA IDA. An official granted the authority to withhold agency records requested under the FOIA for one or more of the nine categories of records exempt from mandatory disclosure under section (b) of the FOIA.

FOIA request. A written request for agency records made by a person, including a member of the public (U.S. or foreign citizen), an organization, or a business, but not including a federal agency or a fugitive from the law, that either explicitly or implicitly invokes the FOIA.

Privacy Act request. A written request from individuals who seek agency records about themselves contained in a Privacy Act system of records.

responsive record. All agency records that meet the language of a FOIA request and are created or obtained by an agency and under agency control at the time of the request.

search. To review agency records manually or by automated means for the purpose of locating those records that are responsive to a FOIA request. As a general rule, an agency must undertake a search that is reasonably calculated to uncover all relevant agency records.