



INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
400 ARMY NAVY DRIVE
ARLINGTON, VIRGINIA 22202-4704

April 16, 2010

INSPECTOR GENERAL INSTRUCTION 5400.7

FREEDOM OF INFORMATION ACT PROGRAM

FOREWORD

This Instruction establishes policy and procedures by which the public may obtain information and records from the Department of Defense Office of Inspector General.

The office of primary responsibility for this Instruction is the Office of Communications and Congressional Liaison. This Instruction is effective immediately.

FOR THE INSPECTOR GENERAL:

A handwritten signature in black ink, appearing to read "SD Wilson".

Stephen D. Wilson
Assistant Inspector General
for Administration and Management

4 Appendices

FREEDOM OF INFORMATION ACT PROGRAM

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CHAPTER 1 GENERAL

- A. Purpose.** This Instruction establishes policy, assigns responsibilities, and prescribes procedures for the Freedom of Information Act (FOIA) Program within the Department of Defense Office of Inspector General (DoD OIG) in accordance with (IAW) references (a) and (b).
- B. References.** See Appendix A.
- C. Definitions.** See Appendix B.
- D. Acronyms.** See Appendix C.
- E. Cancellation.** This Instruction supersedes IGDINST 5400.07, *Freedom of Information Act Program*, May 11, 2006.
- F. Applicability.** This Instruction applies to the Office of Inspector General and the Department of Defense Inspector General Components, hereafter referred to collectively as the OIG Components.
- G. Policy.** The Components shall promote Government transparency and accountability by adopting a presumption in favor of disclosure in all decisions involving the FOIA and responding promptly to requests IAW reference (a).
- H. Responsibilities**
1. The **Assistant Inspector General, Office of Communications and Congressional Liaison (AIG-OCCL)** shall:
 - a. Serve as the appellate authority for the Inspector General.
 - b. Designate the Chief, FOIA Public Liaison Officer.
 2. The **Component Heads** shall:
 - a. Process FOIA requests received from the Office of Freedom of Information (OFOI) IAW this Instruction and reference (d).
 - b. Designate an office and individual(s) as the point(s) of contact (POC) for FOIA matters. Provide written notice to OFOI of POCs, including notice of changes.
 - c. Forward all FOIA requests that are received directly from the requester (known as “out-of-channels requests”) to OFOI for entry into the FOIA case tracking system.

d. Search for and provide documents to the Freedom of Information Division (FOID) that are responsive to requests after receiving a clearly identified and specific FOIA request.

e. Assist FOID in making release determinations by serving as a subject matter expert on documents in their possession. This includes, but is not limited to:

(1) Advising when other OIG Components or other Federal agencies should be consulted for input on releasability (e.g., information in a select paragraph was obtained from the Army; the document should be coordinated with CENTCOM who has primary equities in the content; P&O also has responsive records; etc).

(2) Identifying any critical sensitivities or special considerations in documents that may result in an identifiable harm if the record is released (e.g., the investigation is ongoing; an investigative technique is contained in the text; the closed investigation is part of another ongoing investigation; the subject is not aware of the conduct of the investigation; contractor proprietary information is contained in select portions of the report; etc).

(3) Advising FOID, after reviewing a request, that the record is not reasonably described, (e.g., a record has not been described with sufficient particularity to enable the Component to locate it by conducting a reasonable search); is not an agency record; or is a duplicate request.

(4) Advising, after the conduct of a reasonable search to identify responsive records, that they have “no records” response to the request. In this instance, Components shall identify where they searched for responsive records (e.g., AP&O may state that they searched AP&O and I&E records for the period identified and/or the Federal Records Center, if the period addressed by the requester involves records stored in that location). This level of detail is especially helpful in the event a requester challenges the Agency’s adequacy of search on appeal.

f. Review FOID’s proposed response to the requester, as appropriate.

g. Establish procedures to mark record copies and to notify holders of classified records that have been downgraded, declassified, or reclassified, IAW reference (f), as a result of a review under reference (e).

3. The **Office of General Counsel (OGC)** shall:

a. Provide assistance and advice upon request to FOID in the processing of initial denials of requested records.

b. Coordinate with the Department of Justice on all final appeals for requested records when litigation is likely.

4. The **Office of the Comptroller** shall receive FOIA processing fees for deposit in the U.S. Treasury.

5. The **Chief, FOID** shall:

- a. Organize, direct, and manage the OFOI, and the Privacy Act (PA) Office, and ensure their mutually supported functions are integrated to promote maximum efficiency.
- b. Direct and administer the FOIA Program within the Components.
- c. Execute policies and establish procedures to ensure compliance with references (a) and (d).
- d. Maintain the OIG FOIA Requester Service Center (RSC).
- e. Serve as the central POC within the OIG for the receipt of all FOIA initial requests for records of the Components.
- f. Forward FOIA and PA requests for records from the public to the Components that have possession, control, and/or equities in the requested record.
- g. Serve as the initial denial authority (IDA), who is authorized to deny initial requests for records for the Components.
- h. Maintain a document management system of FOIA requests.
- i. Conduct educational training for the Components on the requirements and implementation of the FOIA IAW references (e) and (d).
- j. Administer the OIG FOIA RSC Web Site. This includes OIG compliance with paragraph (a)(2) of reference (e).
- k. Receive, process, and review all FOIA appeals and make recommendations to the appellate authority for final adjudication of these FOIA appeals.
- l. Provide FOIA litigation support to the OGC.

I. Information Requirements. The OIG Annual FOIA Report is assigned Report Control Symbol DD-DA&M(A) 1365 IAW the requirements of reference (c).

CHAPTER 2 PROCEDURES

A. General. A request for access to information under the provisions of reference (d) may be denied only upon the determination that:

1. The requested information is exempt from release under reference (e).
2. The requester has failed to comply with the procedural requirements imposed by references (a) and (d).

B. Processing Freedom of Information Act Cases within the Components

1. The OFOI receives two types of FOIA requests: direct requests from a member of the general public asking for access to DoD or OIG information; and referrals or consultations from other DoD and non-DoD agencies that contain OIG documents or other agency documents with OIG equities. In each case, OFOI shall forward the FOIA request (and responsive documents if a referral or consultation) to the Component having responsibility for the requested information. Any FOIA request received by a Component out of channels from a source other than OFOI shall be directed to OFOI without delay for formal entry into the case tracking system.

2. FOIA requests shall be sent by OFOI to the Component having responsibility for the information, along with DD Form 2086, *Record of Freedom of Information (FOI) Processing Cost*, Appendix D. The DD Form 2086 shall be completed and returned to the OFOI when processing is complete along with the documents located as a result of the search. If possible, such records shall be made available electronically to facilitate the review and redaction process. The Components shall conduct document searches at the Federal Records Center, Suitland, Maryland, if the documents have been transferred to that center. Documents that have been retired to the National Archives and Records Administration (NARA) are considered the property of NARA and are not subject to Component searches.

3. A FOIA request forwarded to a Component by OFOI may not be declined, except when responsibility for the information sought is challenged. In that case, the Component shall explain via e-mail why the Component is not the appropriate office and identify the specific Component or other government agency that is likely to have responsibility for the information.

4. The OFOI shall assign a suspense date to each request tasked to Components. Requests for extensions shall be made to the OFOI at least 3 working days before the suspense date. Extensions of time shall be granted on a case-by-case basis depending on the reasons that may justify “unusual circumstances.”

5. If the OFOI provides the Component with a document for review that was located by another Federal agency, the Component shall provide the document tasked for review back to OFOI with its release recommendations. Completed copies of DD Form 2086 shall be returned with the packet.

6. When a denial is based on a security classification according to the criteria outlined in reference (f), the explanation shall indicate that a current review of the record supports continued classification. The explanation shall also contain the specific rationale from reference (f), that supports the decision for continued classification of the requested record. A classified document containing unclassified information may not be denied in total under Exemption 1 of reference (e) unless the unclassified information, when taken in aggregate, would reveal classified information. This determination shall be made IAW Section 1.7 of reference (g). Denial of unclassified information not meeting that standard may be accomplished only by exerting one or more of Exemptions 2 through 9 of reference (e).

7. All documents, regardless of classification (i.e., unclassified, Confidential, Secret, Top Secret) that are responsive to a FOIA request shall be provided to OFOI for processing. This includes Sensitive Compartmented Information records and Special Access Programs. When in doubt, Components may contact the Office of Security to verify access level.

8. When a Component cannot locate a requested record and a “no record” determination is made, the e-mail explanation shall so state.

C. Processing Freedom of Information Act Appeals within the Components

1. Upon receipt of an appeal, the appellate authority shall review the entire case file generated during the processing of the initial request to determine if the response to the initial request was IAW references (d) and (e). If the initial action is deemed proper, the appellate authority shall uphold the initial action and notify the requestor accordingly. However, if the appellate authority determines further processing is necessary, he/she shall direct further processing as appropriate.

2. If the appellate authority determines that the administrative record cannot support the adequacy of the initial search, the Component(s) shall be tasked to provide more detailed accounting of the initial search, conduct a new search, or both.

3. If the appeal concerns an administrative processing determination, such as a denial of expedited processing, fee waiver, or a fee category determination, the appellate authority shall review the original case file, along with additional documentary evidence presented by the requester, before making a final determination.

4. Requesters may appeal the lack of a final initial determination by FOID within 20 calendar days of receipt of the request. When the appellate authority receives this type of appeal, the appellate authority shall inform the requester of the action that he/she deems appropriate in response to the appeal.

5. Whenever the final determination by the appellate authority involves a grant of the appeal, either partial or in full, the appellate authority shall provide that determination and additional releasable material to the requester.

6. All determinations made by the appellate authority shall be fully coordinated with the OGC prior to issuance to ensure legal sufficiency.

**APPENDIX A
REFERENCES**

- a. DoD Directive 5400.07, *DoD Freedom of Information Act (FOIA) Program*, January 2, 2008
- b. DoD Directive 5106.01, *Inspector General of the Department of Defense*, April 13, 2006
- c. DoD 8910.1-Manual, *Department of Defense Procedures for Management of Information Requirements*, June 30, 1998
- d. DoD 5400.7-Regulation, *DoD Freedom of Information Act Program*, September 4, 1998
- e. Section 552 of title 5, United States Code
- f. DoD 5200.1-Regulation, *Information Security Program*, January 14, 1997
- g. Executive Order 12958, as amended, *Classified National Security Information*, March 25, 2003

**APPENDIX B
DEFINITIONS**

1. **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, a non-response, or expedited processing.
2. **FOIA Request.** A written request for 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.
3. **Initial Denial Authority.** An individual granted the authority to make initial determinations as to the releasability of records to the public.
4. **Privacy Act Request.** A written request from a U.S. citizen or alien lawfully admitted for permanent residence seeking records on him/her that are contained within a Privacy Act system of records.

**APPENDIX C
ACRONYMS**

DoD	Department of Defense
FOIA	Freedom of Information Act
FOID	Freedom of Information Division
IDA	Initial Denial Authority
NARA	National Archives and Records Administration
OFOI	Office of Freedom of Information
OIG	Office of Inspector General
PA	Privacy Act
POC	Point of Contact
RSC	Requester Service Center

**APPENDIX D
DD FORM 2086, RECORD OF FREEDOM OF INFORMATION (FOI)
PROCESSING COST**

RECORD OF FREEDOM OF INFORMATION (FOI) PROCESSING COST				REPORT CONTROL SYMBOL DD-DA&M(A)1365																	
<i>Please read instructions on back before completing form.</i>																					
1. REQUEST NUMBER	2. TYPE OF REQUEST (<i>X one</i>)		3. DATE COMPLETED (YYYYMMDD)	4. ACTION OFFICE																	
	<input type="checkbox"/> a. INITIAL	<input type="checkbox"/> b. APPEAL																			
5. CLERICAL HOURS (<i>E-9/GS-8 and below</i>)			FEE CODE	(1) TOTAL HOURS	(2) HOURLY RATE	(3) COST															
a. SEARCH			1			0.00															
b. REVIEW/EXCISING			2	X	\$20.00 =	0.00															
c. OTHER ADMINISTRATIVE COSTS			3			0.00															
6. PROFESSIONAL HOURS (<i>O-1 - O-6/GS-9-GS-15</i>)/CONTRACTOR			(1) TOTAL HOURS		(2) HOURLY RATE	(3) COST															
a. SEARCH			1			0.00															
b. REVIEW/EXCISING			2	X	\$44.00 =	0.00															
c. OTHER/COORDINATION/DENIAL			3			0.00															
7. EXECUTIVE HOURS (<i>O-7 - ES 1 and above</i>)			(1) TOTAL HOURS		(2) HOURLY RATE	(3) COST															
a. SEARCH			1			0.00															
b. REVIEW/EXCISING			2	X	\$75.00 =	0.00															
c. OTHER/COORDINATION/DENIAL			3			0.00															
8. COMPUTER SEARCH			(1) TOTAL TIME		(2) RATE	(3) COST															
a. MACHINE TIME (<i>Not PC, desktop, laptop</i>)			4			0.00															
b. PROGRAMMER/OPERATOR TIME (<i>Human</i>)				X																	
(1) Clerical Hours			1		\$20.00/hr =	0.00															
(2) Professional Hours			1		\$44.00/hr =	0.00															
9. OFFICE MACHINE COPY REPRODUCTION			(1) NUMBER		(2) RATE	(3) COST															
a. PAGES REPRODUCED FOR FILE COPY			3	X	.15 =	0.00															
b. PAGES RELEASED			5		.15 =	0.00															
10. PRE-PRINTED PUBLICATIONS			(1) TOTAL PAGES		(2) RATE	(3) COST															
a. PAGES PRINTED			5	X	.02 =	0.00															
11. COMPUTER PRODUCT OUTPUT/ACTUAL COST CHARGES			(1) NUMBER		(2) ACTUAL COST	(3) COST															
a. TAPE/DISC/CD			6	X		0.00															
b. PAPER PRINTOUT			3			0.00															
12. OTHER ADMINISTRATIVE FEES			(1) NUMBER		(2) ACTUAL COST	(3) COST															
a. ALL POSTAGE/ADMINISTRATIVE (<i>See instructions</i>)			3	X		0.00															
13. AUDIOVISUAL MATERIALS			(1) NUMBER		(2) ACTUAL COST	(3) COST															
a. MATERIALS REPRODUCED			4	X		0.00															
14. SPECIAL SERVICES			(1) NUMBER		(2) ACTUAL COST	(3) COST															
a. ALL SPECIAL SERVICES (<i>See instructions</i>)			6	X		0.00															
15. MICROFICHE REPRODUCED						0.00															
FEE CODES			16. FOR FOI OFFICE USE ONLY																		
1 Chargeable to "commercial" requesters. Chargeable to "other" requesters after deducting 2 hours.			a. TOTAL COLLECTABLE FEES																		
2 Chargeable to "commercial" requesters only.			b. TOTAL PROCESSING FEES																		
3 Not chargeable to any fee category.			c. TOTAL CHARGED																		
4 Chargeable to "commercial". Chargeable to "other" after deduction of the equivalent of 2 hours. (Example: deduct \$88.00 professional rate.)			d. FEES WAIVED/REDUCED (<i>X one</i>)																		
5 Chargeable to all fee categories after deduction of 100 pages (DOES NOT include "commercial").			e. FEES NOT APPLICABLE (<i>X one</i>)																		
6 Chargeable to all fee categories. No deductions.			See Chapter 6, Fee Schedule, DoD 5400.7-R, to determine appropriate assessment of fees.																		
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Yes	No	Yes	No																		