



**DEPARTMENT OF DEFENSE**  
**Defense Contract Management Agency**

# **INSTRUCTION**

## **Freedom of Information Act (FOIA) Program**

**Corporate Support Directorate**  
**OPR: DCMA-DSP**

**DCMA INST-503**  
**September 24, 2013**

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**1. PURPOSE.** This Instruction:

a. Reissues DCMA Instruction (DCMA-INST), “Freedom of Information Act Program” (Reference (a)) to update policy and assign responsibility for ensuring the Freedom of Information Act (FOIA) Program is carried out according to section 552 of title 5, United States Code (Reference (b)).

b. Is established in accordance with the authority in DoD 5400.7-R, “DoD Freedom of Information Act Program” (Reference (c)) and Department of Justice FOIA Reference Guide (Reference (d)), and provides basic guidance on the implementation of the DoD FOIA Program within the DCMA, ensuring the Agency is equipped with the appropriate knowledge and means to promptly acknowledge, process, and respond to FOIA requests and administrative appeals. The processes outlined are not meant to be a substitute for the formal rules in Reference (c); if any doubt exists as to the rules, procedures, or guidelines to be followed, Reference (c) is to be consulted and relied on as authority for handling and making determinations about a FOIA request and/or administrative appeal.

c. Is established in compliance with DoD Directive 5105.64 (Reference (e)), and all references listed.

**2. APPLICABILITY.** This Instruction applies to all DCMA activities.

**3. MANAGERS’ INTERNAL CONTROL SYSTEM.** In accordance with the DCMA-INST 710, “Managers’ Internal Control Program” (Reference (f)), this Instruction is subject to evaluation and testing. The process flowchart is located at Appendix A.

**4. RELEASABILITY – UNLIMITED.** This Instruction is approved for public release.

**5. PLAS CODE(S).**

a. Process:

- C194 - Freedom of Information Act (FOIA) Program
- C194L - FOIA litigation
- D194 - Privacy Act Program

- b. Programs: ACAT/Other Customers (when applicable).
- c. Other National; Training and Travel; Local Programs (when applicable).

**6. POLICY RESOURCE WEBPAGE.** <https://home.dcma.mil/policy/503r>

**7. EFFECTIVE DATE.** By order of the Director, DCMA, this Instruction is effective September 24, 2013 and all applicable activities shall be fully compliant within 60 days from this date.



Martin J. Jakim  
Executive Director  
Corporate Support

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## REFERENCES

- (a) DCMA-INST 503, "Freedom of Information Act Program," August 2004 (hereby canceled)
- (b) Section 552 of title 5, United States Code, The Freedom of Information Act
- (c) DoD 5400.7-R, "DoD Freedom of Information Act Program," September 4, 1998
- (d) Department of Justice "Guide to the Freedom of Information Act" (periodically updated)
- (e) DoD Directive 5105.64, "Defense Contract Management Agency (DCMA)," January 10, 2013
- (f) DCMA-INST 710, "Managers' Internal Control Program," September 12, 2011
- (g) DoD 5400.11-R, "Department of Defense Privacy Program," May 14, 2007
- (h) Executive Order 12600, Confidential Commercial Information (1987) (52 Federal Regulation 23781)
- (i) National Archives and Records Administration General Records Schedule 14 (Information Services Records)
- (j) DCMA-INST 809, "Records Management," May 2011
- (k) Office of the Secretary of Defense Memorandum, "Withholding of Information that Personally Identifies DoD Personnel," September 1, 2005
- (l) Section 130b of Title 10, United States Code

## CHAPTER 1

### POLICY

**1.1 OVERVIEW.** The Freedom of Information Act (FOIA) (Reference (b)) provides any person the right to request access to records maintained by the Federal Government. The FOIA established a presumption that records of the Executive Branch of the U.S. government are accessible to the people.

1.1.1. The FOIA generally provides that any person, including U.S. citizens, foreign nationals, organizations, universities, businesses, and state and local governments, has the right to federal records, enforceable in court, except to the extent that such records (or portions of them) are protected from public disclosure by one of nine exemptions (see paragraph 4.9. for details). FOIA requests can be made for any reason, with no showing of relevancy required, and FOIA requesters are under no requirement to explain or justify their requests.

1.1.2. Separate from the FOIA, a Privacy Act request is submitted in accordance with DOD 5400.11-R, “Department of Defense Privacy Program” (Reference (g)) for access pertaining to an individual, for personal information, and/or for information contained in a system of records. A Privacy Act request for access to records will also be processed as a FOIA request. If all or any portion of the requested material is to be denied, it must be considered under the substantive provisions of both the Privacy Act and the FOIA. Any withholding of information must be justified by asserting a legally applicable exemption in each Act.

**1.2. POLICY.** It is DCMA policy that all employees comply with statutory requirements, Presidential mandates, and DoD policy in promoting Government transparency and accountability by (1) adhering to the principles established in the FOIA; (2) adopting a presumption in favor of disclosure in all decisions involving the FOIA; and (3) responding promptly to requests in a spirit of cooperation. For specific DoD FOIA Policy guidance (i.e., memorandums, briefings), see the DoD FOIA Web page, linked from the Policy Resource Web page of this Instruction. The following principles shall be adhered to:

1.2.1. Providing Service to the Public. The FOIA/privacy officer and FOIA managers will provide the public with citizen-centered ways to learn about the FOIA process by:

1.2.1.1. Assisting requesters in understanding and complying with the procedures established by this Instruction.

1.2.1.2. Ensuring procedural matters do not unnecessarily impede a requester from obtaining Agency records promptly.

1.2.1.3. Maintaining and updating a user-friendly FOIA Web page accessible to the general public.

1.2.1.4. Responding to requesters in a courteous and appropriate manner.

1.2.1.5. Providing the public with information about the status of a person's FOIA request.

1.2.1.6. Acting promptly on requests when a member of the public complies with the procedures established in this Instruction.

1.2.2. General FOIA Principles and Requirements. Before proceeding with the processing of a FOIA request, all Agency employees involved in the handling and processing of FOIA actions must understand and adhere to the following basic principles:

1.2.2.1. The FOIA is **not** a research service. The Agency is not obligated to create, compile, or obtain a record to satisfy a FOIA request. Requested information, however, may be extracted from various records or an existing database and may be compiled by the Agency in order to respond to the request.

1.2.2.2. A presumption in favor of disclosure in all decisions involving the FOIA shall be adopted.

1.2.2.3. Access to Agency records shall be granted when there is no FOIA exemption available to withhold the requested information.

1.2.2.4. **Only** existing Agency records are considered responsive documents. The record(s) must exist at the time of the search.

1.2.2.5. Information products (i.e., "Record," see Definitions) must be handled and safeguarded in a way that will not put them at risk of compromise by improper disclosure.

1.2.2.6. If the final response cannot be issued within the legal requirement of 20 working days, the requester should be notified, typically within 20 working days of receipt that the request is of an extensive nature or presents "exceptional" or "unusual" circumstances (refer to Glossary), and that there will be a delay in the processing of their request. It is preferred that the notification be in writing and may be formal, via agency correspondence, or informal, via email message.

1.2.2.7. Requests for fee waivers must demonstrate that disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations and activities of the government. Additionally, if the requester has a commercial interest in the request, it must not be the primary interest. (See paragraph 4.3.3.1. for details.)

1.2.2.8. Expedited processing is granted when the requester can show compelling need for the information. Requests for expedited processing are not granted when the requester is simply trying to circumvent delays in ordinary circumstances. Expedited processing requests are rarely granted. (See paragraph 4.4.3. for criteria.)

1.2.2.9. Should the search produce third-party information covered under Executive Order 12600, Confidential Commercial Information Executive (Reference (h)), the FOIA manager **or** action office (as appropriate) **shall** prepare a letter in order to afford basic protections of potentially confidential commercial information (see paragraph 4.6.).

1.2.2.10. Requests are processed utilizing a multi-track processing system on a first in/first out basis (see paragraph 4.4.).

1.2.2.11. Referrals to other agencies or DoD components are processed, as required (see paragraph 4.6.1. for details).

1.2.2.12. Consultations are processed with other agencies or DoD component(s), as appropriate (see paragraph 4.6.2. for details).

1.2.2.13. Routine status updates should be provided to the requester.

1.2.3. DCMA Specific Requirements. FOIA requests received by Agency personnel, even when not directly addressed to the FOIA Office, must be promptly forwarded to the headquarters (HQ) FOIA analyst for appropriate handling. As a matter of best practices, during the entire course of the processing action, the FOIA manager shall:

1.2.3.1. Document in writing all oral communications with requesters, including the shaping and modification of requests.

1.2.3.2. Utilize and maintain the FOIA Processing Checklist (see the Policy Resource Web page).

1.2.3.3. Enter and maintain up-to-date information in the FOIA electronic tracking system.

1.2.3.4. Maintain contact with requesters, providing status updates and delay notifications as appropriate.

1.2.3.5. As required, provide notification to Defense Freedom of Information Policy Office (DFOIPO), upon receipt **and** prior to responding to and closing a FOIA action, when a request involving Departmental Level Interest is processed (see paragraph 4.11. for details).

1.2.3.6. Process **only** records under the cognizance of DCMA.

1.2.3.6.1. Analyze the request carefully to determine which agency and/or DoD component has cognizance over the responsive documents. While DCMA may be the designated Administrative Contracting Office of the contract that is the subject of a request, requests for non-Agency contract documents **not** issued by DCMA (i.e., contracts, contract modifications, contract proposals, request for proposals), should not be processed by DCMA even though the records are an integral part of the Agency's administrative contracting files (see "Record" in

Definitions.) Requests of this nature shall be referred to the issuing DoD component (i.e., the buying command) by the FOIA manager.

1.2.3.6.2. Refer requests for pre-award audits and pre-award surveys directly to the buying command. Pre-award audits and pre-award surveys are prepared at the specific request of, and on behalf of, the buying offices; therefore, release of the information contained in these documents must be made directly by the issuing command.

1.2.3.7. Notify FOIA manager and provide responsive records (or portions thereof) proving to be under the cognizance of another agency or DoD component for **Referral** or **Consultation**, as appropriate (see paragraph 4.6.). FOIA referrals and consultations must be made by a FOIA Manager.

## CHAPTER 2

### RESPONSIBILITIES

**2.1. DCMA DIRECTOR.** DCMA Director shall designate and appoint, in writing, the following decision authorities for formally responding to FOIA requests:

2.1.1. Initial Denial Authority (IDA). IDA are Agency management officials appointed in writing by the Agency Director to issue denials on full or partial withholding of records and to issue No Records responses when no responsive documents are found to exist. Full and partial denials, as well as No Records responses, must be signed by the IDA, as outlined in paragraphs 2.1.1.1. and 2.1.1.2. In the commander's/executive director's absence, the designee may sign "for the Commander" or "for the Executive Director" (designee shall sign using the commander's/executive director's signature block). Designated IDAs are:

2.1.1.1. HQ/Center Level. HQ/Center levels include Director for Policy and Correspondence Control (DCMA-DSP); Director for Security and Counterintelligence (DCMA-DSS); Director for Congressional and Public Affairs (DCMA-DSA); Deputy Executive Director, Contracts (DCMA-AQ); and Executive Director, Operations/Chief Operations Officer (DCMAO).

2.1.1.2. Executive Director, Special Programs (DCMAS); Commander, DCMA International (DCMAI); and Commander/Director for Regional Commands.

2.1.2. Appellate Authority. An Appellate Authority is an Agency official delegated to make final administrative appeal determinations to either uphold the original decision made by the IDA, or to reverse all or portions of the original decision. Appeal responses must be signed by the Appellate Authority. The DCMA Deputy Director is the designated Appellate Authority.

2.1.3. HQ FOIA/Privacy Officer. The HQ FOIA/Privacy Officer is the Agency official authorized to make initial determinations on fee waiver requests, expedited processing requests, requester category, fee estimate, and fee reduction determinations.

**2.2. CENTER DIRECTORS, CONTRACT MANAGEMENT OFFICE (CMO) COMMANDERS, AND COMPONENT HEADS.** Center directors, CMO commanders, and component heads shall designate FOIA monitors (refer to paragraph 2.7.) and ensure FOIA related duties are promptly and effectively carried out.

**2.3. DIRECTOR FOR POLICY AND CORRESPONDENCE CONTROL (DCMA-DSP).** In addition to providing oversight and ensuring that FOIA policy is established and carried out according to statutory requirements, the DSP Director shall serve as:

2.3.1. FOIA Public Liaison. The FOIA Public Liaison is the Agency official responsible for responding to public concerns pertaining to the service received from FOIA staff members.

2.3.2. HQ/Center level IDA. (Refer to paragraph 2.1.1.1.).

**2.4. FOIA/PRIVACY OFFICER (DCMA-DSP).** The FOIA/Privacy Officer is an individual designated with primary FOIA and Privacy Act program management responsibility, as well as:

2.4.1. Providing oversight of FOIA processing activities at the HQ and Centers, as well as the International Directorate and Regions.

2.4.2. Providing support, guidance, and/or training to Agency personnel; specifically legal counsel, FOIA analysts, FOIA managers, FOIA monitors, and FOIA action officers.

2.4.3. Responding to requester inquiries and status requests.

2.4.4. Making initial determinations on fee waiver and expedited processing requests (refer to paragraph 2.1.3.).

2.4.5. Ensuring the Public Liaison is kept abreast of emerging issues and policy.

2.4.6. Providing backup support to the HQ FOIA analyst/FOIA manager.

**2.5. FOIA ANALYST (DCMA-DSP).** The FOIA analyst is an individual designated with responsibility for:

2.5.1. Serving as the HQ FOIA analyst responsible for initial review and analysis on incoming FOIA requests. The FOIA analyst shall:

2.5.1.1. Perform intake, assign a control number, and log into the FOIA tracking system.

2.5.1.2. Conduct initial review and analysis of request.

2.5.1.3. Immediately forward all fee waiver and/or expedited processing requests to the FOIA/Privacy Officer. Additionally, all requests falling under the DFOIPO significant reporting requirements must be forwarded to HQ FOIA/Privacy Officer without delay.

2.5.1.4. Obtain additional information from requester as needed.

2.5.1.5. Assign action to FOIA manager.

2.5.1.6. Notify requester of receipt, providing contact information.

2.5.2. Serving as the HQ/Centers FOIA manager responsible for processing and managing FOIA actions assigned to HQ and/or Centers activities.

2.5.3. Inputting and maintaining current and accurate data in the FOIA tracking system.

2.5.4. Providing support, guidance, and/or training to Agency personnel involved in the processing of FOIA requests.

2.5.5. Responding to requester inquiries and status requests without delay.

2.5.6. Maintaining and updating the FOIA Electronic Reading Room (ERR) on the Agency FOIA Web page.

2.5.7. Providing backup support to the HQ FOIA/Privacy Officer.

**2.6. FOIA MANAGERS.** FOIA managers are individuals at the HQ FOIA Office, as well as the International Directorate and Regional Offices of General Counsel, responsible for processing and managing FOIA requests, to include:

2.6.1. Ensuring FOIA actions are processed in accordance with statutory requirements.

2.6.2. Providing support and guidance to FOIA monitors and FOIA action officers.

2.6.3. Responding to requester inquiries and status requests.

2.6.4. Seeking advice and assistance from HQ FOIA staff, as appropriate.

**2.7. FOIA MONITORS.** FOIA monitors are individuals designated by the Center directors, CMO commanders, and component heads, responsible for:

2.7.1. Recording and maintaining a log of all assigned FOIA actions.

2.7.2. Ensuring appropriate action officer is tasked without delay.

2.7.3. Monitoring the progress of all FOIA actions assigned by the FOIA manager to preclude bottlenecks and ensure continuity is maintained on open actions.

**2.8. FOIA ACTION OFFICERS.** FOIA action officers are individuals designated by the Center directors, CMO commanders, component heads, Office of General Counsel, and/or FOIA manager to gather responsive documents and to provide recommendations based upon specific knowledge of the facts surrounding the request. Because of the complex nature and potentially collateral issues (e.g., prospective or pending litigation) regarding certain requests, multiple action officers may be assigned to search for and to review responsive records. In cases involving multiple action officers, close coordination between the action officers and the FOIA manager(s) is required to ensure compliance with various statutory and regulatory authorities.

**2.9. OFFICE OF GENERAL COUNSEL.** The Office of General Counsel consists of attorneys designated throughout the Agency to provide FOIA/legal advice to Agency staff.

**2.10. AGENCY MANAGERS AND SUPERVISORS.** Agency management and supervisory staff shall proactively support the FOIA program by ensuring staff members under their charge process any assigned FOIA actions as a priority, even though not directly related to their mission.

## CHAPTER 3

### PROCESSING

**3.1. OVERVIEW.** All FOIA requests must be in writing and must sufficiently describe the records being sought in order for a knowledgeable official of the Agency to conduct a search with reasonable effort. If fees are applicable, the requester should include a statement regarding willingness to pay all fees (or those up to a specified amount), **or** request a waiver or reduction of fees. (Refer to paragraphs 4.1. and 4.3. for additional details.)

**3.2. HQ PRELIMINARY INTAKE.** All FOIA requests, regardless of the addressee/recipient, shall be immediately forwarded to the HQ FOIA Office to undergo initial intake procedures by the FOIA analyst who will:

3.2.1. Assign an administrative control number and log request into the FOIA electronic tracking system.

3.2.2. Review and assess the request to ensure it meets the initial requirements under the FOIA (see paragraph 4.1. for details). The request is ready to be processed once the request is considered to be perfected and/or any fee or expedited processing matters have been resolved.

3.2.2.1. If a request does not meet the minimum requirements of the FOIA, the FOIA analyst must provide notification of the defects and assist requester in perfecting the request.

3.2.2.2. When a properly perfected FOIA request includes either a request for fee waiver and/or expedited processing, the FOIA analyst must immediately forward the request to the FOIA/privacy officer for determination whether to grant the fee waiver and/or request for expedited processing (see paragraph 4.3.4. for fee waivers and paragraph 4.4.3. for expedited processing).

3.2.3. Provide receipt notification to the requester, which must include the assigned FOIA control number and appropriate contact information. The purpose of the notification is simply to inform the requester that the request has been received and is being reviewed to determine if further information is needed.

3.2.4. Determine if the request is likely to generate DoD departmental-level interest. If so, the DFOIPO Departmental Level Notification Process procedures must be followed. (See paragraph 4.11. and the Policy Resource Web page for instructions.)

3.2.5. Determine which offices are likely to have responsive records and prepare the tasker to initiate the search for responsive records.

**3.3. INITIATE ACTION TO ASSIGN REQUEST FOR PROCESSING.** Once the request is believed to be a **perfected** request, the FOIA analyst will make appropriate notations in the electronic tracking system, to include the perfected date, and prepare a suspense tasker. The FOIA analyst will ensure the standard tasking form is completed, to include a summarized

version of the request, taking into account any clarification, modifications, narrowing of scope, etc., that have been arranged with the requester. If the perfected date cannot be determined without subject matter expertise, the FOIA analyst will include instructions on the tasker to ensure (1) the request is perfected prior to processing, and (2) the perfected date is entered into the electronic tracking system. The FOIA analyst will include the following with the suspense/tasker:

- Electronic copy of the original request
- Standard tasker (see the Policy Resource Web page for blank template)
- Verification of Adequacy of Search certification form (see the Policy Resource Web page for blank template)
- FOIA Processing Checklist (see the Policy Resource Web page for blank template)

3.3.1. Tasker Preparation. The standard tasking form has two sections. As appropriate, the FOIA manager will assign either Tasker #1 (Preliminary Inquiry) or Tasker #2 (Tasking for Formal Action) as described below.

3.3.1.1. Tasker #1. The Preliminary Inquiry is used prior to initiating a search for responsive records to obtain additional information to ensure a search is in order (i.e., fee estimate, verification that office would likely have records).

3.3.1.2. Tasker #2. The Tasking for Formal Action is used to initiate a search for responsive records.

3.3.2. Assignment of Suspense Tasker to FOIA Manager. The FOIA analyst forwards the suspense tasker and supporting documents via email to the FOIA manager with any comments and/or additional instructions necessary.

**3.4. FOIA MANAGER ACTIONS.** Upon receipt of a FOIA tasking, the assigned FOIA manager shall conduct a review to (1) ensure the FOIA action has been assigned appropriately; and (2) determine if additional offices may have responsive records. If so, the FOIA manager must immediately notify the FOIA analyst so that additional offices can be tasked as appropriate. The FOIA manager will perform the following actions:

3.4.1. FOIA Manager Review. The assigned FOIA manager shall:

3.4.1.1. Make a determination as to which office(s) are likely to possess responsive documents in order to initiate action to conduct a search for responsive records.

3.4.1.2. Revise the summary accordingly as further communications and/or negotiations with the requester are made to obtain additional clarification, modifications, narrowing of scope, etc. The tasker will expressly indicate that the FOIA monitor and action officer are to follow the summarized version of the request.

3.4.1.3. Provide guidance in the suspense/tasking regarding the preparation and processing of the response as appropriate.

3.4.2. Notification to Requester. The FOIA manager must provide expeditious notification to the requester, advising that the request has either been:

3.4.2.1. Received and acknowledged as a perfected request and that a search for responsive records has been initiated (see paragraph 4.1.).

3.4.2.2. Received and informed that in order to process the request, further information will be needed. Until such information (i.e., establishment of appropriate fee category, fee arrangements, clarification of request) is received, the request will not be substantively acted upon until it is believed to be perfected.

3.4.3. Assignment of Action to FOIA Monitor. Once the FOIA tasker is prepared, the FOIA manager assigns the action to the FOIA monitor and serves as an advisor to the action office throughout the processing of the request.

**3.5. FOIA MONITOR ACTIONS.** Upon receipt of the FOIA tasker, the FOIA monitor will conduct a review to verify that the action has been appropriately assigned, and will immediately forward the tasker to the appropriate action officer. The FOIA monitor will:

3.5.1. Maintain administrative control of the action (i.e., track actions).

3.5.2. Coordinate actions between multiple action officers.

3.5.3. Follow up with action officers on overdue actions.

**3.6. FOIA ACTION OFFICER ACTIONS.** Upon receipt of the FOIA tasker, the FOIA action officer will:

3.6.1. Conduct Preliminary Review. A preliminary review of the request is conducted by the action officer to ensure the request has reached the office likely to possess the responsive documents. The action officer must immediately notify the FOIA manager if **any** of the following apply:

3.6.1.1. Additional **internal** Agency offices are also likely to maintain responsive records.

3.6.1.2. The request is misdirected (i.e., DCMA is **not** the appropriate office for handling the request; rather, the request should have been submitted by the requester to an external agency or DoD component). **NOTE:** Referrals must be made by the FOIA manager and never by the action officer, CMO, etc.; however, any knowledge that may assist and properly identify other entities, including contact information, should be provided to the FOIA manager.

3.6.1.3. Another agency or DoD component has an interest in responsive Agency records (even though they are **not** the official release authority for all or portions of the responsive documents). When this is the case, such records must be sent by the FOIA manager to the

agency or DoD component for a FOIA consultation prior to making a release determination (see paragraph 4.6.2.).

3.6.2. Contact with the Requester. If contact with the requester is necessary (i.e., to obtain further clarification, narrow the scope of a broad request, obtain initial willingness to pay assessable fees), depending on the circumstances the contact may be made by either the FOIA manager or the action officer, adhering to the following principles:

3.6.2.1. Unlike contacting the requester regarding fee issues, where it is often necessary to negotiate back and forth with the requester as various issues arise, the time may be tolled (i.e., stopping the clock) only **once** to obtain additional information (i.e., further amplification, reduction in scope). Therefore, appropriate coordination between the FOIA manager and action officer is essential prior to contacting the requester, interested third parties, and other government agencies.

3.6.2.2. Once contact is made with the requester, the request is in abeyance (i.e., is put on hold) until the requester provides the requested information. It is imperative that the action officer inform the FOIA manager so that the electronic tracking system can be updated to reflect that the request is in abeyance so that the statutory time period will not continue to run (see paragraph 4.5.).

3.6.3. Search for Responsive Documents. Once the action officer has conducted an initial review, he or she initiates a search for responsive documents. If the action officer believes that other individuals may have responsive documents, he or she works with supervisors to enlist their help in searching for records. These individuals should follow the guidelines below when conducting a search for responsive records:

3.6.3.1. Action officers must consider the reasonable whereabouts of likely responsive records, to include making a manual search as well as an electronic search for records.

3.6.3.2. The Agency is not obligated to create, compile, or obtain a record to satisfy a FOIA request. Requested information, however, may be extracted from various records or an existing database and may be compiled by the Agency in order to respond to the request.

3.6.3.3. **Only** existing Agency records are considered responsive documents. The record(s) must exist at the time of the search. (See “Record” under Definitions.) Any document created **after** the search for responsive records is considered non-responsive.

3.6.3.4. All possible avenues must be considered before making and certifying a determination that no record could be found. It can never be assumed that because a document is old, it does not exist.

3.6.4. Receipt of Responsive Documents. Once the search is complete, all individual(s) tasked to conduct a search for responsive records must provide the following to the action officer:

- Responsive documents
- Recommendations/information to assist in making release determination
- Number of hours expended during search process
- Signed Verification of Adequacy of Search form (see Policy Resource Web page for blank form)

3.6.5. Review of Responsive Records. The action officer will:

3.6.5.1. Review responsive documents to ensure all records responsive to the request have been recovered.

3.6.5.2. As appropriate, prepare a Submitter Notice letter in order to afford basic protections of potentially confidential commercial information required by Confidential Commercial Information (Reference (h)) which specifically requires that the submitter of any potentially confidential commercial or proprietary information be notified if the search produces third-party information covered under Reference (h). (See paragraph 4.7. for details.) The FOIA manager and/or action officer will work in conjunction with the assigned Office of General Counsel to prepare and issue a Submitter Notice Letter, if appropriate.

3.6.5.3. If assigned, review documents for exempt material and apply redactions, if appropriate. (See paragraphs 4.8. and 4.10. for details.) Written recommendations may be provided to the FOIA manager, as appropriate, to include concerns pertaining to the releasability of responsive records. Citations to any non-FOIA guidance pertaining to the public release of responsive information should be included by the action officer as well.

3.6.6. Submission of Package to FOIA Manager. Review tasker to ensure all instructions have been followed and accomplished, and provide the completed package to the FOIA manager to include:

3.6.6.1. Responsive documents in Adobe .pdf format.

3.6.6.2. The total number of man-hours expended as detailed on the tasker. It is not necessary for the action officer to fill-out the FOIA fee assessment form; the FOIA manager will complete the DD Form 2086, Record of Freedom of Information (FOI) Processing Cost based on the information provided by the action officer. **NOTE:** Time spent reviewing the documents to ascertain whether the records are responsive to the request is included as search time.

3.6.6.3. Signed Verification of Adequacy of Search certification(s). (All search parameters must be included to ensure and document that a thorough search has been conducted.)

3.6.6.4. Responsive record(s) that contain or are expected to contain classified information or that are marked as TOP SECRET, SENSITIVE COMPARTMENTED INFORMATION, or SPECIAL ACCESS PROGRAM information, must be referred. The FOIA action officer will notify the FOIA manager that special handling procedures will need to be

established. The FOIA action officer will then consult with cleared personnel in the Office of the General Counsel to establish those procedures.

**3.7. DOCUMENT REVIEW TO DETERMINE RESPONSIVENESS/APPLICATION OF FOIA EXEMPTIONS.** Depending on who will be reviewing the documents and applying redactions to the exempt material (varies from office to office as indicated on tasking by FOIA manager), any clearly non-responsive documents should be removed, following the guidelines below:

3.7.1. Responsive/Non-Responsive Records. FOIA requests shall be interpreted liberally when determining which records are responsive to the requests. If non-responsive information is contained within a document that includes responsive information, **do not** black out the text and mark it as non-responsive. Instead, release the entire document with appropriate redactions applied. Should DCMA desire to withhold non-responsive information, the FOIA manager will:

3.7.1.1. Consult with the requester and determine if the requester views the information as responsive and if not, seek the requester's concurrence to deletion of non-responsive information **without** a FOIA exemption. This concurrence should be reflected in the response letter.

3.7.1.2. If the requester does not agree to deletion of non-responsive information without a FOIA exemption, release non-responsive information that is not exempt from public release.

3.7.1.3. For non-responsive information that is exempt, notify the requester that even if the information were determined responsive, it would be exempt from release to the public. In such circumstances, the appropriate exemptions shall be applied and appeal rights shall be provided in the response.

3.7.2. Identifying Exempt Material/Applying Redactions. The individual designated to apply exemptions shall identify and recommend whether responsive records are protected (exempt) from release under the FOIA (see paragraph 4.9. for details). Implications of the Privacy Act and other statutory and regulatory provisions must be considered. The designated individual will:

3.7.2.1. Agency-approved Redaction Method. Apply redactions, if applicable, to protect exempt information utilizing the redaction tool in Adobe Acrobat Professional (standard on all DCMA computers). Refer to Policy Resource Web page for Adobe Redaction Tool Instructions (see paragraph 4.10. for additional details).

3.7.2.2. First Party Release. An individual requesting records pertaining to themselves **or** a commercial entity requesting records pertaining to their own interests are considered first party requesters; unless there is no reason to otherwise withhold the information, sensitive and/or proprietary information does not need to be redacted. However, the release letter must explicitly state that the information is being provided as a first-party release. Any subsequent requests for the same records must be treated as an entirely new request and appropriate exemptions must be applied.

3.7.2.3. Glomar Response. When the fact of the existence or nonexistence of a responsive record would itself reveal personally private information, and the public interest in disclosure is not sufficient to outweigh the privacy interest, the Glomar (refusal to confirm or deny) response shall be used. The response letter shall neither confirm nor deny the existence or nonexistence of the record being requested. The Glomar response must be used consistently, not only when a record exists, but also when a record does not exist.

**3.8. PREPARATION OF RESPONSE PACKAGE.** Depending on who will be preparing the response (varies from office to office as indicated on tasking by FOIA manager), a response letter shall be prepared and issued to the requester (refer to sample templates/language on Policy Resource Web page). The designated individual will ensure the guidelines below are followed for the various types of responses listed; additionally, the corresponding bulleted items will be included in the response:

3.8.1. Granted in Full Response. Full releases may be signed by the FOIA manager, legal counsel, or as indicated in the tasking. Documentation verifying the records are approved for public release must be maintained in the case file and legal coordination/concurrence must be obtained prior to release. The letter **must** include:

- Summary of requested records
- Validation that all requested records are being provided
- Requester's fee category, to include fee calculation, balance due, and payment instructions (refer to paragraph 4.3.)
- If no fees are assessed, include appropriate statement
- Instructions to send checks payable to U.S. Treasurer to FOIA manager

3.8.2. Negative Responses. All Denial/Partial Denial and No Records responses must be signed by the IDA and legal coordination/concurrence must be obtained prior to release. The letter **must** include:

- Summary of requested records
- Full/detailed explanation of exempt information
- Summary of information being withheld in full, to include number of pages
- Requester's fee category, to include fee calculation, balance due, and payment instructions (refer to paragraph 4.3.)
- If no fees are assessed, include appropriate statement
- Instructions to send checks payable to U.S. Treasurer to FOIA manager
- Administrative appeal rights (see paragraph 4.12.)

3.8.3. Responses to Requests for Multiple Items. Whether the request is granted in full or partially denied, the response must include a line-item summary in bullet form, listing each item and describing its disposition, when responding to a request for multiple items. The requester must receive a thorough accounting of the individual dispositions.

**3.9. LEGAL COORDINATION.** Obtain coordination and/or advice from the local Office of General Counsel prior to release, unless releasing information that is otherwise routinely disclosed to the public.

**3.10. CLOSEOUT.** To ensure all closeout data is accurately and fully recorded and maintained, when an action is ready for closure, FOIA managers must copy the following documents to the secure HQ FOIA repository, designated by the HQ FOIA Office.

- Original request
- Tasker (with summary of any revisions to original request)
- All communications pertaining to the request
- All signed Verification of Adequacy of Search certifications
- FOIA Processing Checklist
- Responsive documents (non-redacted)
- Redacted responsive documents
- Final signed and dated response letter

3.10.1. The FOIA manager will send an email notification to the HQ FOIA analyst indicating the FOIA action is ready for closeout once **all** applicable closeout documents are copied to the HQ FOIA repository.

3.10.2. The HQ FOIA analyst, using the FOIA Processing Checklist, will verify all pertinent data has been correctly entered into the electronic tracking system to ensure accurate statistics are maintained for preparation of the FOIA Annual Report.

3.10.3. Formal closeout will take place after successful verification; only the HQ FOIA analyst can perform this function.

3.10.4. The action remains in an active status until all items listed in paragraph 3.10. are provided by the FOIA manager.

**3.11. ADMINISTRATIVE APPEALS.** Administrative appeals, regardless of the addressee/recipient, shall immediately be forwarded to the HQ FOIA/privacy officer. FOIA appeals are processed by the HQ FOIA/privacy officer in conjunction with the HQ Office of General Counsel and in accordance with statutory regulations (see paragraph 4.10. and the formal rules in DoD 5400.7-R (Reference (c)) for details).

**3.12. LITIGATION.** Any FOIA litigation filed against the Department of Defense naming DCMA as a party to the complaint will be processed in accordance with Reference (c). The HQ Office of General Counsel, in conjunction with the HQ FOIA/privacy officer, will provide assistance and case review, as appropriate, with the Defense Freedom of Information Act Office, the Office of the Secretary of Defense Office of Counsel, and the Department of Justice.

**3.13. ELECTRONIC READING ROOM (ERR).** The 1996 amendments to the FOIA mandates that accessible ERRs, with agency FOIA response materials and other information

routinely available to the public for inspection and copying, be posted to the Agency website. The ERR is the primary responsibility of the HQ FOIA analyst who will:

3.13.1. Ensure that information released on a previous FOIA request is posted to the ERR upon receipt of a secondary request for the identical information. The releasing FOIA manager will make the actual update to the ERR via the “Contact Webmaster” link on the home page of the Agency website. (From the pull-down, select “Modify Existing Content.”)

3.13.2. Post information to the ERR such as:

3.13.2.1 Final opinions and orders made in the adjudication of cases that may be cited, used, or relied upon as precedents in future adjudications.

3.13.2.2 Statements of policy and interpretations that have been adopted by the agency and are not published in the Federal Register.

3.13.2.3. Administrative staff manuals and instructions, or portions thereof, that establish DoD policy or interpretations of policy that affect the public.

3.13.2.4. Records released to the public, under the FOIA, that **are** or **will** likely become the subject of subsequent requests.

### **3.14. REPORTING REQUIREMENTS.**

3.14.1. The FOIA Annual Report to Congress. The FOIA Annual Report is mandated by section 552(e)(1) of the Freedom of Information Act (Reference (b)) and is completed and submitted by the HQ FOIA Office on a fiscal year basis.

3.14.1.1. The DFOIPO sets the suspense date for submitting the FOIA Annual Report; it is due approximately 1-month after the close of the fiscal year.

3.14.1.2. The report is prepared and submitted by the HQ FOIA/Privacy Officer utilizing DD Form 2564, Annual Freedom of Information Act Report. To facilitate compilation of the statistics in completing the report, the Annual Report data must be accurately tracked and maintained by FOIA staff as requests are processed and closed throughout the year.

3.14.2. Chief FOIA Officer Report to the United States Attorney General. Agencies are required to review all aspects of their agency’s FOIA administration and to report annually to the Department of Justice on the steps taken to improve FOIA operations and facilitate information disclosure. The Chief FOIA Officer Report to the United States Attorney General is prepared by the HQ FOIA/privacy officer and is generally due to the DFOIPO in mid-December following the close of the fiscal year.

3.14.3. Adhoc Suspense Actions. Various suspense actions are tasked to the HQ FOIA Office on an adhoc basis throughout the fiscal year by the DFOIPO and are generally responded to by the HQ FOIA/privacy officer.

**3.15. RECORDS RETENTION.** FOIA records shall be maintained and disposed of by the FOIA Managers according to National Archives and Records Administration General Records Schedule (Reference (i)), the Agency Records Schedule (DCMA-INST 809, “Records Management” (Reference (j))), and the Agency FOIA Record File Plan, Record Series 120.04a.

## CHAPTER 4

### PROCESSES FOR IMPLEMENTATION OF PROCEDURES

**4.1. DEFINING A PROPERLY RECEIVED FOIA REQUEST.** Until a request is properly received (i.e., perfected), the Agency is not obligated to search for responsive records, meet time deadlines, or release any records. A request is not deemed to have been properly received until it has been identified as a proper FOIA request by the HQ FOIA analyst and/or FOIA manager(s). A properly received request is one that meets specific criteria; the requester must:

4.1.1. Provide a written or email request. The requester is not required to explicitly cite the FOIA.

4.1.2. State willingness to pay assessable fees or request a fee waiver. If the processing charges are likely to exceed what the requester is willing to pay, the requester shall be provided a fee estimate and given the opportunity to reformulate the request to meet his or her needs at a lower cost. The request **shall not be perfected** until an agreement on fees has been obtained.

4.1.3. Provide a reasonable description of the information being requested.

4.1.4. Request specific Agency records. Requests for records not under the cognizance of DCMA, including requests for contract documents (i.e., contracts, modifications, solicitations, proposals) must be referred to the appropriate DoD component.

4.1.5. Provide a signed authorization if requesting information pertaining to and on behalf of another individual; the authorization must be maintained in the case file.

4.1.6. Be current on any payments owed to DCMA and/or DoD components with regard to fees from previous requests.

**4.2. REQUESTS FROM GOVERNMENT OFFICIALS.** The FOIA does **not** pertain to **Federal** employees seeking information to carry out official government business. The provisions of the FOIA are reserved for persons with private interests and/or non-Federal business interests.

4.2.1. Requests from individuals representing **state** or **local** Governments shall be considered the same as any other requester.

4.2.2. Requests from Members of Congress (including Congress members seeking records on behalf of their constituents) shall be considered the same as any other requester; however, records sought on behalf of a Congressional Committee, Subcommittee, or either House sitting as a whole are **not** to be processed under the FOIA.

**4.3. FEES.** Fees are to be assessed by the FOIA manager and applied in accordance with DoD 5400.7-R (Reference (c)), as follows:

4.3.1. Negotiating/Determining Fees. In determining assessable FOIA fees, the FOIA manager will:

4.3.1.1. Obtain a declaration of willingness to pay assessable fees prior to the Agency initiating a search for responsive records. If it is later determined that fees will exceed the initial amount, the FOIA manager will negotiate with the requester as appropriate.

4.3.1.2. Provide notification that additional justification is required if a requester is not in agreement with the fee category deemed appropriate by the FOIA manager. During this time, the request **shall not** be substantively processed.

4.3.1.3. Apply charges for search and review regardless of the outcome of the search or the releasability of the material. Exceptions to this practice may be used on a case-by-case basis.

4.3.1.4. Prepare an estimate (i.e., an approximation of assessable fees) if desired by the requester.

4.3.1.5. Ensure that the fee provisions of The Privacy Act as outlined in DoD 5400.11-R (Reference (g)) are applied to all information requested and/or released from a Privacy Act System of Records (i.e., the only assessable processing fees under the Privacy Act are for duplication).

4.3.1.6. Apply only duplication charges when requesters seek information previously released by the Agency under the FOIA; search and/or review fees may not be charged.

4.3.1.7. Waive fees if the total assessable fees are less than \$25.

4.3.1.8. Not use fees to discourage requesters.

4.3.2. Time Limits/Impact on Fees. The Agency's failure to meet statutory time limits and/or provide appropriate notification to the requester may limit or prevent assessment of fees; therefore, the FOIA manager, following the prescribed guidelines in DoD 5400.7-R (Reference (c)), will:

4.3.2.1. Provide notification of exceptional or unusual circumstances (see paragraph 4.5.1.3.) as soon as possible after receipt of the request.

4.3.2.2. Send notification to the requestor, explaining the need for an extension beyond the 20-day time limit, reminding the requester of the first-in, first-out principles.

4.3.3. Fee Categories. The FOIA manager will place the requester in one of the fee categories described in Table 1 for quick reference; refer to the following paragraphs for details.

**Table 1. Requester Categories for Fee Assessment**

<b>CATEGORIES</b>	<b>Search</b>	<b>Review</b>	<b>Duplication</b>
Commercial	All	All	All
Educational Non-Commercial Scientific	None	None	No charge for first 100 pages
News Media	None	None	No charge for first 100 pages
Other (Individual requesting information for personal use)	No charge - First 2 hours	No Assessable Fees	No charge for first 100 pages

**NOTE: Refer to DD Form 2086 for fee schedule.**

4.3.3.1. Commercial Use. Commercial requesters should indicate a willingness to pay **all** search, review, and duplication costs when the records are requested for commercial use. No free time is afforded for commercial requests. Commercial use refers to the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. See DoD 5400.7-R (Reference (c)) for details on what constitutes a requester in this category. (**NOTE:** Review time is chargeable only to Commercial requesters; no other requester category may be assessed review time.)

4.3.3.2. Educational or Noncommercial Scientific Institution. Requesters should indicate a willingness to pay only duplication charges in excess of the first 100 pages, which are provided at no cost. See Reference (c) for specific details on what constitutes a requester in this category.

4.3.3.3. Representatives of the News Media. Requesters should indicate a willingness to pay only duplication charges in excess of the first 100 pages, which are provided at no cost. A representative of the news media is any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. See Reference (c) for details on what constitutes a requester in this category.

4.3.3.4. All Others. Requesters who do not fit into any of the three previous categories are considered to be an “Other” requester and are entitled to the first 2 hours of search effort and/or the first 100 pages of duplication at no cost. “Other” requesters should indicate a willingness to pay assessable search and duplication costs in excess of this entitlement.

4.3.3.4.1. The entitlement is only allowed once per request for similar information from the same requester and cannot be segregated into separate requests to obtain multiple entitlements.

4.3.3.4.2. If the FOIA manager reasonably believes that a requester, or a group of requesters acting in concert, is attempting to break a request down into a series of requests for the purpose of avoiding the assessment of fees, the FOIA manager will aggregate the requests and assess charges accordingly.

4.3.3.4.3. Multiple requests for similar information from the same requester (or group of requesters) are also aggregated for purposes of fee assessment.

4.3.4. Reduction and Waiver of Fees. Decisions to grant or deny fee waivers will be made by the HQ FOIA/privacy officer in accordance with The Freedom of Information Act (Reference (b)). All fee waiver requests shall, upon receipt, be forwarded to the HQ FOIA/privacy officer.

4.3.4.1. Requests for fee waivers must demonstrate that disclosure of the requested information is in the public interest because it is:

- Likely to contribute significantly to public understanding of the operations and activities of the government
- Not primarily in the commercial interest of the requester

4.3.4.2. Decisions are occasionally made (on a case-by-case basis; i.e., unexcused delays) to reduce fees; however, this is **not** considered a **fee waiver** where, because of qualifying circumstances, fees are not assessable. When the decision is made to reduce fees that are otherwise assessable this is simply referred to as a **reduction in fees**.

4.3.5. Fee Assessment/Application/Rates. FOIA managers will compute fees using DD Form 2086 based upon input provided by the office(s) conducting the search and/or review. Time shall be computed to the nearest 15 minutes.

4.3.6. Fee Collection. Response letters must provide instructions indicating that requesters send payment to the FOIA manager via check or money order, made payable to U.S. Treasurer. Advance payment is only required if:

- Requester has a history of failing to pay fees in a timely fashion
- Fees will exceed \$250

4.3.7. Depositing Collected FOIA Fees. Once payment is received, the FOIA manager will:

- Prepare Cash Collection Voucher (DD Form 1131, Cash Collection Voucher)
- Make copy of check and voucher for FOIA case file copy
- Send voucher and check to HQ Budget Office to assign the line of accounting (LOA); HQ Budget Office will submit to the Financial Liaison Center (FLC) for deposit with Defense Finance and Accounting Service (DFAS)

**4.4. MULTI-TRACK PROCESSING SYSTEM.** When a response determination cannot be made within 20 working days, the request shall be processed by the FOIA manager in a multi-track processing system on a first-in, first-out concept; however, this does not eliminate the FOIA manager's responsibility to exercise due diligence in processing requests in the most expeditious manner possible. Each FOIA manager shall maintain individual multi-track processing systems based on the following:

- Date of receipt
- Amount of work and time involved in processing request
- Whether the request qualifies for expedited processing

4.4.1. Simple Queue. Generally, requests that do not meet the requirements for the Complex or Expedited queue outlined below are to be placed in the Simple queue.

4.4.2. Complex Queue. The FOIA manager will, upon determining that a request qualifies for the Complex queue, provide notification to the requester and afford the requester the opportunity to limit the scope of the request in order to qualify for the Simple (and consequently faster) queue. The FOIA manager will ensure that any modifications to the original request are obtained in writing. When any of the following apply, the request will be placed in the Complex queue.

4.4.2.1. The actual complexity of the request requires additional processing time.

4.4.2.2. The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records, especially when located in various offices.

4.4.2.3. Intensive, internal coordination is hindered by various schedule conflicts.

4.4.3. Expedited Queue. Requests meeting the test for expedited processing must be processed promptly. Requesters **must** have a compelling need and **must** meet one of the following criteria in order to qualify for expedited processing:

4.4.3.1. Failure to expeditiously obtain the records could pose an imminent threat to the life or physical safety of an individual.

4.4.3.2. The records could be urgently needed by an individual primarily engaged in disseminating information in order to inform the public concerning actual or alleged Federal government activity. The matter must be of widespread and exceptional media interest in which possible questions exist about the government's integrity, which could ultimately result in loss of public confidence. Additionally, the information must have a particular value that will be lost if not disseminated quickly (i.e., a breaking story of general public interest).

4.4.3.3. Failure to obtain the records on an expedited basis could reasonably be expected to result in an imminent loss of substantial due process rights.

**4.5. STATUTORY TIMEFRAMES/TOLLING RESPONSE TIME.** The public has a right to information concerning the activities of the U.S. Government in accordance with established statutory timeframes. The statutory time period to make a release determination on a FOIA request is 20 business days and begins on the date a perfected request is received by the FOIA office.

4.5.1. Exceptions to the Statutory Time Period. In addition to the FOIA caseload and/or complexity of FOIA actions in relationship to the availability of trained resources, the following are exceptions to the statutory time period:

4.5.1.1. If the request was originally misdirected and subsequently referred to DCMA, the statutory time period begins on the day received by DCMA or 10 working days after it was received by the DoD FOIA office originally receiving the request, whichever date is earlier.

4.5.1.2. The statutory time period may be tolled (i.e., stopping the clock) for two reasons; in both situations, the requester's response to the Agency's request ends the tolling period. Requests may be tolled by the FOIA manager as follows:

4.5.1.2.1. The time period may **only** be tolled **once** to go back to the requester to ask for clarification and/or additional information. Therefore, prior to contacting the requester to obtain clarification, the FOIA manager must ensure the request is thoroughly reviewed to ensure all issues are addressed.

4.5.1.2.2. The time period may also be tolled if it is necessary for the FOIA office to clarify issues regarding fee assessment with the requester. Because this may need to be done in stages as the records are located and processed, there is no limit to the number of times the requester may be contacted to clarify fee-related issues.

4.5.1.3. If **unusual** or **exceptional** circumstances (see Glossary) prevent a final response determination within the statutory time period, the FOIA manager shall advise the requester in writing and provide the requester an opportunity to narrow the scope of the request or arrange for an alternative timeframe. The extension may be formal (i.e., by letter sent via U.S. Mail) or informal (i.e., by phone or email). Any agreed upon verbal communication with the requester must be documented in writing. Examples of unusual or exceptional circumstances are:

4.5.1.3.1. The need exists to search for and collect records from separate offices within the Agency.

4.5.1.3.2. The need to search for and examine a voluminous amount of records.

4.5.1.3.3. Consultation with another DoD component is required to respond to the request.

#### 4.5.2. Consequences for Failure to Respond within Required Time Limits.

4.5.2.1. FOIA litigation may be initiated by requesters for failure to respond within the required time limits if the conditions in paragraph 4.4.1. are not met and/or do not apply. When the complainant prevails, attorney fees and costs resulting from FOIA litigation are no longer paid by the Department of Justice; instead, DCMA is directly responsible for plaintiff's legal fees.

4.5.2.2. Penalties exist for non-compliance with statutory timeframes. Search fees may not be assessed if the Agency fails to comply within required time limits unless unusual or exceptional circumstances apply and unless requester is notified within 20 days from receipt of a perfected request.

**4.6. REFERRALS/CONSULTATIONS/MISDIRECTED REQUESTS.** Some FOIA actions require interaction with other Federal agencies and/or DoD components and, depending on the circumstance, can occur at any time during the processing of a FOIA action. These interactions can consist of one or more of the following:

- Referrals
- Consultations
- Misdirected Requests

4.6.1. Referrals. If a request is received for non-Agency DoD records, the request shall be referred to the appropriate DoD component. The referral must be made within 10 days of receiving the request and must advise the original date of receipt.

4.6.1.1. If some or all of the documents recovered while conducting a search for responsive records are non-Agency records, the responsive records shall be referred to the originator of those records to make a release determination and direct response to the requester. In some instances (i.e., email threads), segregable portions of records may need to be referred by the FOIA manager to the originating agency or DoD component.

4.6.1.2. Unless the correct recipient is clearly known (e.g., the request is for a copy of a contract issued by the Air Force), the receiving office must be contacted in advance to ensure the referral is accepted and to obtain the appropriate contact information.

4.6.1.3. The requester must be advised of the referral and provided contact information.

4.6.2. Consultations. When it is determined that another agency or DoD component may have a valid interest or equity in a DCMA record (or a portion of a DCMA record), that record should be sent to the DoD component by the FOIA manager for the purpose of soliciting input on the release determination.

4.6.2.1. The consulting agency or DoD component should be instructed to review the records and return the package with release recommendation to DCMA for response to the requester. The response should include the exemptions cited, the name of the IDA and Appellate Authority contact information in the event an Administrative Appeal is filed.

4.6.2.2. The requester must be advised that there will be a delay due to the necessity for consultation.

4.6.2.3. Consultations to other components shall not interfere with the processing of the request. Processing will continue, making interim release(s) on other portions of responsive records as appropriate.

4.6.2.4. Consultations from other components shall be reviewed and recommendations as to release will be provided in a memo or email. If all or portions are recommended to be withheld, the correspondence must be approved by the appropriate IDA. The recommendation may be formal (i.e., by letter sent via U.S. Mail) or informal (i.e., by email). The correspondence

shall include the exemptions cited, the name of the IDA and Appellate Authority contact information.

4.6.3. Misdirected Requests. Unlike Referrals and Consultations, which result from requests that are properly made to the Agency and involve the actual transmission of records to another Agency/component, a misdirected request is one that is received by DCMA in error and must be transferred to the appropriate DoD component for action.

4.6.3.1. Examples of commonly misdirected requests include, but are not limited to requests for:

4.6.3.1.1. Contract records resulting from a contract awarded by a non-DCMA entity such as request for proposals, proposals, and contract award documents, to include the actual contract and any modifications and statements of work.

4.6.3.1.2. Records not meeting the definition of an Agency record, even when prepared/originated by DCMA. An example of such a record is a pre-award survey which is prepared by DCMA at the specific request of, and on behalf of, another DoD component for use by that component to conduct business related to their mission.

4.6.3.2. Requests for non-Agency records received in error shall be transferred to the appropriate DoD component FOIA office **within 10 working days**, advising the receiving office of the original receipt date.

4.6.3.3. Requests shall not be transferred until the appropriate FOIA office is contacted by the FOIA manager and agreement is reached that the referral is, in fact, in order. Because of the frequent public perception that the DCMA issues, manages, and administers **all** contracts within the DoD and therefore receives a large number of misdirected requests for copies of contracts and other non-contract administration records, if the appropriate FOIA office is known, it is not necessary to obtain agreement/acceptance of a referral for copies of contracts and related documents issued by another DoD entity.

4.6.3.4. The requester shall simultaneously be advised that the request was received in error and is being transferred, providing appropriate contact information.

**4.7. SUBMITTER NOTICE (EXECUTIVE ORDER 12600) PROCESS.** Requests for records that may contain confidential commercial information that could be exempt from disclosure under Exemption (b)(4) are subject to Confidential Commercial Information Executive Order 12600 (Reference (h)). The FOIA manager and/or the individual designated with responsibility to process the FOIA action must:

4.7.1. Notify the requester of delay, advising that the Submitter Notice process will require an extension beyond the statutory time period.

4.7.2. Promptly notify the submitter of the information (i.e., contractor) to afford reasonable time to the submitter (e.g., 20 to 30 calendar days, depending on complexity and geographical

location of the submitter) to present any objections concerning release. When no reasonable basis for objection to the information exists, there is no requirement to exercise the Submitter Notice process; however, if there is doubt as to appropriateness, caution should be exercised and the Submitter Notice procedures should be followed. (See sample notification templates on the Policy Resource Web page.)

4.7.3. Evaluate any objections claimed by the submitter and prepare release recommendation. The recommendation should be a collaborative effort between the FOIA manager and/or individual designated to process the request and the Office of General Counsel. The final decision to disclose information shall be made by the appropriate IDA.

4.7.3.1. If a submitter raises issues deemed to have potential merit, the submitter shall be afforded additional time to present additional arguments and/or amplification on the legal and substantive issues involved prior to making the determination.

4.7.3.2. Should the Agency disagree with any objections and make a determination to release information, advance notification must be made to afford the submitter the opportunity to take the necessary steps to protect their interests. The notification shall expressly indicate that, upon receipt, the submitter is afforded 10 business days to respond to the Agency. The notification shall be sent in a manner that provides for verification of the date of receipt.

4.7.4. Notify the requester when the submitter advises it will seek a restraining order or take court action to prevent release of the information. This is referred to as a Reverse FOIA and action on the request must be halted until the outcome of the court action is known.

**4.8. TYPES OF RELEASE UNDER THE FOIA.** A final response may result in the requester being provided fully releasable copies of all records, or may result in release of records with redactions. Occasionally, all records are withheld. If no responsive records are found, a final response will result in a No Records response. The basic release categories are as follows:

4.8.1. Full Release. All records requested are granted in full.

4.8.2. Withholding/Denial or Partial Withholding/Denial. When a request for a record is denied in whole or in part or for any other adverse determination, the IDA shall provide the requester in writing an explanation of the substantive basis for denial, including:

- The specific citation of the statutory exemption applied
- An estimate of the volume of the records denied in their entirety (i.e., number of pages or other appropriate form of estimation)
- Administrative appeal rights

4.8.3. No Records. A No Records response is appropriate when no responsive records are found to exist. The response shall be provided in writing and signed by the IDA. The requester must be able to understand why no documents were located; therefore, the letter should include:

4.8.3.1. Details regarding the exact searches undertaken which resulted in a negative finding.

4.8.3.2. General information concerning the mission of DCMA. As appropriate, include language that the No Records response is limited to DCMA and that DCMA is not answering on behalf of the entire DoD. (Refer to sample No Records responses on the Policy Resource Web page.)

4.8.3.3. Appeal rights indicating that the No Records response is considered an adverse determination.

4.8.3.4. Thorough documentation must be maintained to support proof that an adequate search was conducted. A Verification of Adequacy of FOIA Search or No Records Certificate form (refer to Policy Resource Web page) must be filled out by each individual assigned to conduct a search for responsive records.

4.8.4. Other Reasons for Not Releasing Records. Other reasons for non-release of records include:

- Referrals of non-Agency records
- Withdrawn requests
- Fee-related reasons
- Records are not reasonably described
- Records are not Agency records and not subject to the FOIA
- Duplicate requests
- Misdirected requests (requests addressed to DCMA in error)

**4.9. FOIA EXEMPTIONS.** Records shall not be withheld in whole or in part unless the record is exempt from disclosure under the FOIA. Although portions of some records may be denied, the remaining reasonably segregable non-exempt portions must be released to the requester. There are nine FOIA exemptions which protect information, in whole or in part, from public disclosure unless otherwise prescribed by law. Exemptions subject to discretionary release are those that protect a government interest; specifically exemptions (b)(2), (b)(5), and (b)(7), (References (c) and (d)).

4.9.1. Exemption 1. Documents properly classified as **secret** in the interest of National defense or foreign policy.

4.9.2. Exemption 2. Documents related solely to internal personnel rules and practices.

4.9.3. Exemption 3. Records specifically exempted by other statutes. (Refer to DoD Exemption (b)(3) Statutes found on the Policy Resource Web page.)

4.9.4. Exemption 4. Trade secret, privileged/confidential commercial, or financial information obtained from a person as defined in the FOIA. Ensure the Submitter Notice (Executive Order 12600) Process is utilized, if applicable.

4.9.5. Exemption 5. A privileged inter-agency or intra-agency record that is normally privileged in civil discovery. In order to invoke this privilege, the information must be pre-decisional **and** must be deliberative in nature. The three main privileges are:

- Deliberative process privilege (designed to facilitate agencies' decision making process)
- Attorney work product privilege
- Attorney client privilege

4.9.6. Exemption 6. Personal information, the release of which would constitute a clearly unwarranted invasion of personal privacy. Decisions to withhold individual employee names under FOIA Exemption (b)(6) does not end whenever a privacy interest has been identified; rather the privacy interest must be weighed against the public's interest in disclosure.

4.9.6.1. Public Interest Factor. The only public interest cognizable under FOIA is the public's understanding of the operations or activities of the government. To determine if public interest prevails, consider the following:

- Does disclosing names provide additional insight into government activities?
- Would disclosure of names contribute to the understanding of government functions?

4.9.6.2. Guidelines for Making Release Determination. Unless the public interest factor is the predominate factor, utilizing a broad interpretation should provide consistency in the application of Exemption (b)(6) across the organization. Senior management and public figures within the Agency (i.e., those individuals listed on the Agency Web site) are generally released. Factors to consider when deciding whether to release personal information:

- The government employee's rank
- The degree of any possible wrongdoing and strength of evidence against the employee
- Whether there are other ways to obtain the information
- Whether the information sought is related to job function or is of a personal nature
- Exemption (b)(7)(c) should also be considered when protecting personal information contained in investigative records (use both where applicable)

4.9.6.3. Mandatory Withholding of Names of DoD Personnel. Due to the sensitive nature of the operations and activities of the DoD, discretionary release is not optional in certain instances, as follows:

4.9.6.3.1. Lists Containing Names of DoD Personnel. Due to the heightened security following the attacks of 9/11, in order to provide greater protection of DoD personnel, **lists** containing the names of DoD employees shall be withheld (Office of the Secretary of Defense Memorandum (Reference (k))).

4.9.6.3.2. Names of Deployed DoD Employees. In addition to being exempt from release under Exemption (b)(6), names of deployed DoD employees are exempt from release under a (b)(3) statute, specifically section 130b of Title 10, United States Code (Reference (1)), which pertains to personnel in overseas, sensitive or routinely deployable units. Both exemptions should be cited when withholding names of deployed DoD employees.

4.9.6.4. Administrative Appeals Pertaining to Exemption (b)(6). Administrative appeals addressing (b)(6) exemptions will be handled on a case-by-case basis.

4.9.7. Exemption 7. Records compiled for law enforcement purposes, specifically:

- Exemption 7(a) – interference with law enforcement proceedings
- Exemption 7(b) – deprivation of an individual’s right to a fair trial or an impartial adjudication
- Exemption 7(c) – unwarranted invasion of personal privacy  
**NOTE:** Use in combination with Exemption (b)(6)
- Exemption 7(d) – disclosure of the identity of a confidential source
- Exemption 7(e) – disclosure of techniques, procedures, or guidelines for investigations or prosecutions
- Exemption 7(f) – endangerment of an individual’s life or physical safety

4.9.8. Exemption 8. Records containing or related to examination, operating, or condition reports about financial institutions that the U.S. Securities and Exchange Commission (SEC) regulates or supervises.

4.9.9. Exemption 9. Records containing exempt information about gas or oil wells.

**4.10. REDACTIONS.** The Adobe Professional Redaction tool is the only redaction tool approved for Agency use to sanitize or redact non-releasable information. (See easy to use, step-by-step Adobe Redaction Instructions on the Policy Resource Web page.) **Under no circumstances should black markers be used to redact exempt material!**

**4.11. SIGNIFICANT REQUESTS INVOLVING DEPARTMENTAL LEVEL INTEREST.** Requests meeting the definition of a Significant Request (refer to Glossary) must follow the Departmental Level Notification Process For Significant DoD FOIA Requests and Responses (see instructions on the Policy Resource Web page.). Prior to making public release, the FOIA manager must:

4.11.1. Upload responsive documents to the Government-wide document sharing system Intelink/Inteldocs to obtain DFOIPO clearance to release.

4.11.2. Notify DFOIPO via email that the documents have been uploaded and are awaiting review and clearance to release. The HQ FOIA/privacy officer must also be notified.

4.11.3. Follow-up with the DFOIPO on a regular basis to determine if documents have been cleared for public release.

**4.12. ADMINISTRATIVE APPEALS.** Requesters previously receiving adverse determinations to their FOIA request can request and address reconsideration to a higher Agency authority. In addition to denials in any form, the following adverse determinations are subject to appeal:

- Disapproval of a fee category claim by a requester
- Denial of a request for waiver or reduction of fees
- Disputes resulting from fee estimates
- Denial of a request for expedited processing
- Disputes resulting from No Records determinations
- Not providing a response determination to a FOIA request within statutory time limits
- Any determination found to be adverse in nature by the requester

4.12.1. Appeal Rights. Any adverse determination made by the Agency shall include instructions with appeal rights in the response letter and must:

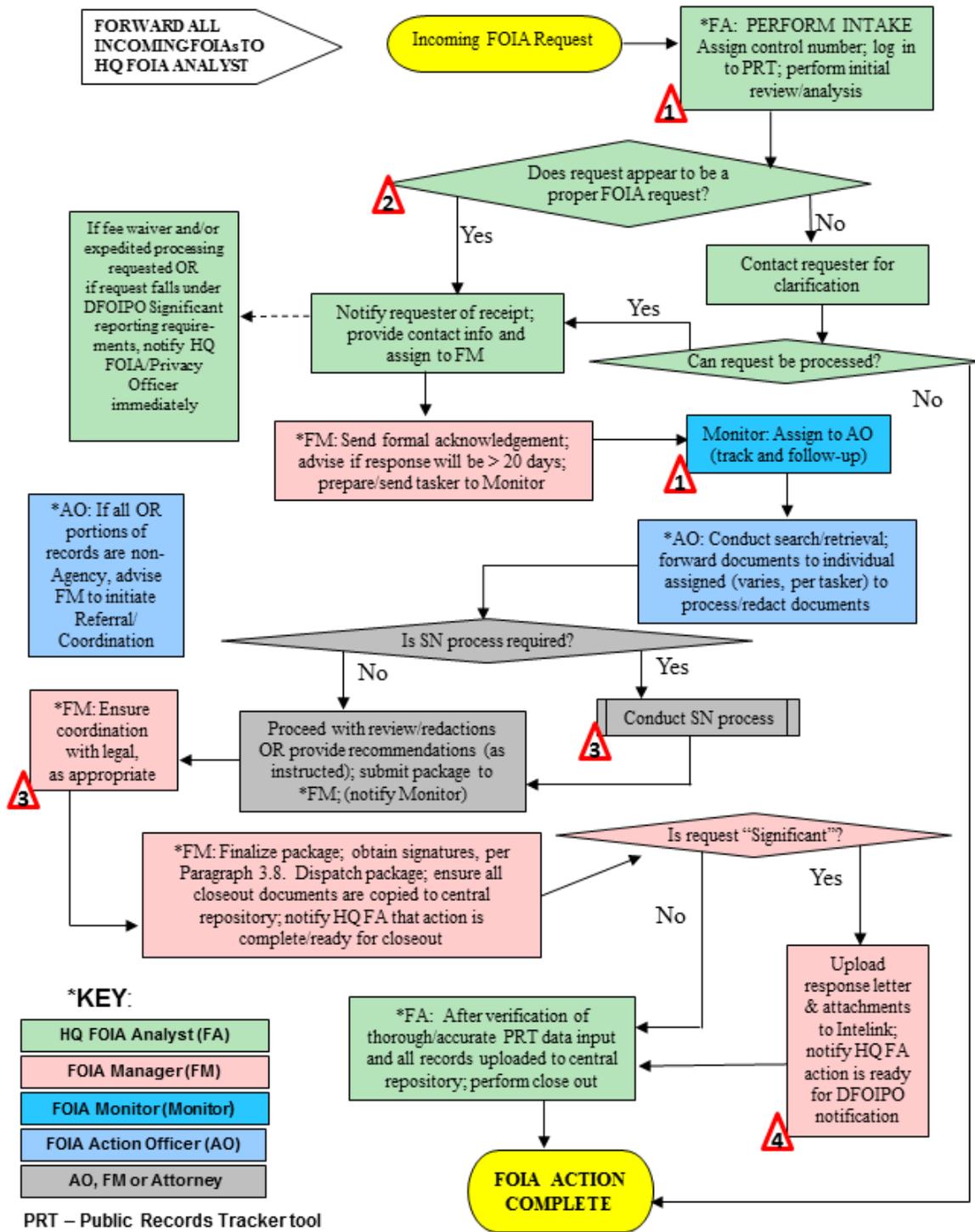
- Be postmarked no later than 60 calendar days after the date of the initial denial letter (**NOTE:** Exceptions may be considered on a case by case basis)
- Be in writing
- Instruct the requester to address the Administrative Appeal to the Appellate Authority
- Include the address where the appeal should be mailed

4.12.2. Processing Time for Administrative Appeals. When a request is administratively appealed because it was either denied in whole or in part under one or more of the FOIA exemptions, the requester has a right to a timely substantive response.

4.12.2.1. Final determinations on appeals normally shall be made within 20 working days after receipt. Requesters shall be advised if the delay exceeds the statutory requirements. (Refer to DoD 5400.7-R (Reference (c)) for details.)

4.12.2.2. When the caseload prevents the Agency from making a response determination within 20 working days, the appeal shall be processed in a multi-track processing system. All provisions of the processing tracks established for initial requests apply to Administrative Appeals.

### APPENDIX A FOIA PROCESS FLOWCHART



Key Control Table			
Control	Functional Area	Risk	Possible Controls
1	Timeliness	-Inability to identify request -Request will not be responded to in a timely manner - Bottom line: REQUIRED by Open Government Act	-FOIA Managers logs information to Public Records Tracker -Monitor initial Tracking Log
2	Analysis/Review of request	- Premature assignment to process results in inefficient use of time - Misspending of taxpayer dollars	-HQ FOIA Analyst performs Preliminary Review to ensure request is perfected prior to assignment
3	Release Determination	-Inappropriate release of proprietary and commercially sensitive (trade secret) information -Inappropriate release of other exempt information - Improper release could result in appeals and/or litigation	- E.O. 12600 process ensures contractors have opportunity to object to release - GC Review
4	Document/PRT Accuracy	- Inaccurate reporting - Required documentation will be inaccessible in event of appeal/litigation - Agency not compliant with DoD release procedures	- FOIA Manager uploads critical records to repository - FOIA analyst completes FOIA checklist - DoD requires notification on "significant" requests

## DEFINITIONS

**Administrative Appeal.** Administrative process by which requesters previously receiving adverse determinations to their FOIA request can request and address reconsideration to a higher Agency authority.

**Appellate Authority.** The individual designated by the Agency Director to make final administrative appeal determinations to either uphold the original decision made by the Initial Denial Authority (IDA) or to reverse all or portions of the original decision. Appeal responses must be signed by the Appellate Authority.

**Complex Queue.** When circumstances prevent timely processing of FOIA requests, the request is placed in the Complex processing track or queue, where the request is processed on a first-in, first-out basis.

**Consultation.** The formal process of forwarding documents under the cognizance of the Agency to another agency or DoD component having an interest in responsive Agency records for review and comments as to release.

**DD Form 1131.** Cash Collection Voucher

**DD Form 2086.** Record of Freedom of Information (FOI) Processing Cost

**DD Form 2564.** Annual Freedom of Information Act Report to Congress

**Defense Freedom of Information Policy Office (DFOIPO)** – The DoD office providing policy and guidance.

**Denial.** A full Denial response in one in which all responsive records are denied.

**Electronic Reading Room (ERR)** . A link to the FOIA home page on the Agency website containing information routinely available to the public.

**Exceptional Circumstances.** Delays justified by (1) Refusal by the requester to reasonably modify the request or arrange for an alternative time frame. (Agency must be able to demonstrate that efforts were made to negotiate with the requester to modify the scope of their request.); or (2) Agency backlog; HOWEVER, the Agency must be able to demonstrate reasonable progress in reduction of backlog.

**Executive Order No. 12600 (Submitter Notice Process)** . Predisclosure notification procedures for confidential commercial information.

**Expedited Processing.** A request seeking exceptional consideration in processing the request in an accelerated manner. The requester must demonstrate urgent need; agencies rarely grant expedited processing.

**Expedited Queue.** When a request qualifies for Expedited processing, the request shall be placed in the expedited processing track or queue where the request shall be processed as expeditiously as possible.

**Fee Waiver Request.** As opposed to a reduction in fees for other reasons, requests for fee waivers must demonstrate that disclosure of the requested information is in the public interest because (1) it is likely to contribute significantly to public understanding of the operations and activities of the government; and (2) it is not primarily in the commercial interest of the requester.

**FOIA Action Officer.** Individuals appointed to gather responsive documents and provide recommendations based on their specific knowledge of the facts surrounding the request.

**FOIA Manager.** Individuals responsible for ensuring FOIA actions are processed in accordance with statutory requirements, providing support and guidance to FOIA Monitors and FOIA Action Officers and responding to requester inquiries and status requests.

**FOIA Monitor.** Individuals appointed to record and monitor the progress of all FOIA actions assigned by the FOIA Manager.

**FOIA/Privacy Officer.** Individual designated with primary FOIA and Privacy Act program management responsibility as well as oversight of the FOIA processing activities; also the individual appointed by the Agency Director with responsibility for making the decision to grant or deny fee waiver and expedited processing requests.

**FOIA Public Liaison.** Individual appointed by the Agency Director responsible for responding to public concerns pertaining to the service received from FOIA Manager(s).

**FOIA Processing Checklist.** A tool developed to assist FOIA Managers in tracking and recording all processing phases through closure.

**Glomar Response.** Refers to a “neither confirm nor deny” response to a FOIA request in order to avoid confirming whether the record actually exists and/or to protect an individual’s privacy in law enforcement records.

**Granted in Full Response.** A request resulting in all requested records being granted in full.

**Initial Denial Authority (IDA) .** Agency management officials authorized to issue denials on full or partial withholding of records and to issue No Records responses when no responsive documents are found to exist.

**Misdirected Request.** Unlike Referrals and Consultations, which result from requests that are properly made to the Agency and involve the actual transmission of records to another Agency/component, a Misdirected Request is one that is received by DCMA in error and must be transferred to the appropriate agency or DoD component for action.

**National Archives and Records Administration (NARA)** . The National Archives and Records Administration (NARA) is the Nation's record keeper. In addition to being the record holder for archived Federal agency records, NARA provides records retention guidance and policy to Federal agencies.

**No Records Response.** The response provided by the IDA when no responsive records are found to exist.

**Office of General Counsel (GC)** . Agency team designated to provide legal advice; the HQ GC provides authoritative guidance on policy and final determinations on recommendations for FOIA release determinations, appeal decisions, and FOIA litigation.

**Perfected Request.** A FOIA request that contains all the required elements of a proper FOIA request and is ready for processing.

**Partial Denial.** A Partial Denial response is one that results in the record(s) being denied in whole or in part (i.e., any response containing adverse determinations).

**Policy Resource Page.** A tool to assist in implementing the procedures contained in Agency Instruction; a separate page of tools, information, and additional guidance (e.g., point of contact, forms, training instructions, links).

**Privacy Act.** A Federal law establishing a Code of Fair Information Practice that governs the collection, maintenance, use, and dissemination of personally identifiable information about individuals that is maintained in systems of records by federal agencies.

**Record.** An Agency record is one that is either created or obtained by an agency, and under agency control at the time of the FOIA request. Factors to consider when making a determination are (1) when not created for DCMA, the intent of the record's creator to retain or relinquish control; (2) the ability of the agency to use and dispose of the record; (3) the extent to which the Agency has relied upon the record; and (4) the degree to which the record was integrated into Agency record systems or files.

**Redaction Tool.** A tool providing the ability to permanently conceal text, images, metadata, etc. on documents that are otherwise releasable to the public.

**Reduced Fees.** As opposed to a fee waiver, which must meet qualifying circumstances, decisions are occasionally made (i.e., unexcused delays) to reduce fees; however, this is not considered a fee waiver but rather, a reduction in fees.

**Referral.** The formal process for transferring non-Agency records recovered while conducting a search for responsive records to the originator of the records for release determination and direct response to the requester.

**Request for Proposal.** An invitation to bid on contracts issued at an early stage in the procurement process.

**Reverse FOIA.** An action in which the submitter (or source) of information—usually a corporation or other business entity that has supplied an agency with data on its policies, operations or products—seeks to prevent the agency that collected the information from revealing it to a third party in response to the latter’s FOIA request.

**Review Time.** All time spent processing responsive documents for disclosure, to include reviewing for disclosure, applying exemptions, and applying redactions. Research time is not included, nor is the actual response package preparation and coordination.

**Search Time.** All time spent locating responsive records, to include time spent determining if records are, in fact, responsive.

**Significant Request.** A significant FOIA request is one where, in the Component’s judgment, the subject matter of the released documents may generate media interest and/or may be of interest or potential interest to DoD senior leadership. Any request involving the current administration, previous administrations, or current or previous DoD leadership shall be included. Requests involving Members of Congress should also be considered.

**Simple Queue.** When a request does not meet the criteria established for Complex requests or qualify for Expedited processing, the request is placed in the Simple processing track or queue, where the request is processed on a first-in, first-out basis.

**Submitter Notice Process (Executive Order No. 12600).** Pre-disclosure notification procedures for confidential commercial information.

**Unusual Circumstances.** Delays justified by (1) the need to search for and collect the requested records from other facilities that are separate from the office determined responsible for a release or denial decision on the requested information; (2) the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are requested in a single request; (3) the need for consultation, which shall be conducted with all practicable speed, with other Agencies having a substantial interest in the determination of the request, or among two or more DoD components having a substantial subject-matter interest in the request.

**Verification of Adequacy of Search Certification.** Document to record the methodologies used to conduct thorough research for responsive documents in order to defend the Agency in the event of future litigation. Each individual involved in the search for responsive records shall prepare and sign the certification.

## ACRONYMS

CMO	Contract Management Office
DCMA-INST	DCMA Instruction
DFOIPO	Defense Freedom of Information Policy Office
ERR	Electronic Reading Room
FOIA	Freedom of Information Act
HQ	Headquarters
IDA	Initial Denial Authority
OPR	Office of Primary Responsibility
PLAS	Performance Labor Accounting System
SEC	U.S. Securities and Exchange Commission