



DCMA Manual 4502-12

Freedom of Information Act

Office of Primary Responsibility

Corporate Governance

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Purpose: In accordance with the authority in DoD Directive 5105.64, this Manual implements policies and defines procedures as defined in DCMA Instruction 4502.

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1. SECTION 1: GENERAL ISSUANCE INFORMATION

1.1. APPLICABILITY. This issuance applies to all DCMA activities unless higher-level regulations, policy, guidance, or agreements take precedence.

1.2. POLICY. It is DCMA policy to:

a. Make available timely and accurate information and records under established authorities, procedures and practices so the public, Congress, and the media may assess and better understand DCMA's role within the DoD Acquisition Enterprise, including DCMA's mission, programs and operations.

b. Guard against the unauthorized release of information protected by federal law, regulation and various policies and issuances.

c. Protect individual privacy rights and other civil liberties, consistent with federal law, regulation and various policies and issuances.

d. Minimize collection, use, maintenance, and dissemination of information about individuals for purposes of discharging DCMA's statutory responsibilities, when possible and practicable.

e. Promote transparency and accountability by adopting a presumption in favor of disclosure in all decisions involving requests for information via the Freedom of Information Act (FOIA) from Congress, media, educational institutions and the general public, responding promptly to requests in a spirit of cooperation, and by taking affirmative steps to make the maximum amount of information available to the public, consistent with the responsibility to protect national security and other sensitive DoD information.

f. Execute this manual in a safe, efficient, effective, and ethical manner.

SECTION 2: RESPONSIBILITIES

2.1. DIRECTOR, DCMA. The Director, DCMA will:

- a. Administer a DCMA FOIA Program, ensuring adequate funding and personnel to meet the statutory requirements of the FOIA and of all established applicable regulations and policies.
- b. Serve as, or appoint another Component official to serve as, the DCMA FOIA appellate authority.
- c. Identify and submit the name of at least one DCMA employee to the DoD Directorate for Oversight and Compliance (DO&C) for designation as FOIA Public Liaison(s).
- d. Ensure the applicable chain of command, servicing legal advisors, cognizant public affairs officers (PAOs) and legislative affairs officers are aware of FOIA releases that may be of significant interest to the public, media, Congressionals, senior DoD official(s), or related FOIA offices. Ensures that DO&C receives information copies of significant FOIA requests and advance notification of proposed responses.
- e. Ensure officials and employees who implement the FOIA are trained on the provisions of DoDD 5400.07, "DoD Freedom of Information Act (FOIA) Program," DoDM 5400.07, "DoD Freedom of Information Act (FOIA) Program," and Section 552 of Title 5, United States Code (U.S.C.).
- f. Ensure DCMA submits reports as required by DO&C.

2.2. APPELLATE AUTHORITIES. The DCMA Appellate Authorities (AAs) will:

- a. Review and either uphold or reverse all FOIA appeal responses.
- b. Sign all responses to a FOIA appeal. AAs are listed by name or position on the resource page for this manual.

2.3. INITIAL DENIAL AUTHORITIES. DCMA Initial Denial Authorities (IDAs) will:

- a. Issue full or partial denials in responding to original FOIA requests received by DCMA. IDAs will apply the nine exemptions under the FOIA in determining the release of certain information in records responsive to FOIA requests.
- b. Issue "No Records" responses when no responsive documents are found to exist. IDAs are listed by name or position on the resource page for this manual.

2.4. FOIA PUBLIC LIAISON. The DCMA FOIA Public Liaison will:

- a. Ensure the DCMA FOIA website complies with the requirements established in DoDM 5400.07.

- b. Assist in the reduction of any delays in responding to requests.
- c. Increase transparency and understanding of responses to status requests.
- d. Assist in dispute resolution whether conducted internally within DCMA or as an agency liaison with the Office of Government Information Services (OGIS).
- e. Review reports prepared by the FOIA Officer as required by DO&C and submit for approval by the Executive Director, Corporate Operations (DC).

2.5. FOIA OFFICER. The FOIA Officer will:

- a. Assign, monitor, track and direct the processing of all FOIA requests received by the Agency.
- b. In coordination with the Agency Office of General Counsel, establish uniform procedures for Agency processing of FOIA requests.
- c. Advise, guide and train, when necessary, DCMA employees assigned as FOIA attorneys, managers, analysts, and action officers.
- d. Make initial determinations on fee waivers and expedited processing requests.
- e. Keep the FOIA Public Liaison informed of the status of the DCMA FOIA program.
- f. Prepare reports required by DO&C and submit for review by the FOIA Public Liaison.
- g. Maintain the DCMA FOIA Library.
- h. Maintain the agency FOIA electronic reading room. Make decisions about posting specific records which are readily available online for interested requesters.

2.6. FOIA MANAGERS. FOIA Managers will:

- a. Ensure FOIA actions are processed in accordance with statutory requirements and procedures established by the FOIA Officer.
- b. Provide support and guidance to personnel assigned to search for records responsive to a FOIA request.
- c. Respond to requester inquiries and status requests.
- d. Provide statistical data of FOIA cases to be incorporated into Headquarters reports.
- e. Track process of each FOIA request assigned to region of responsibility.

2.7. COMPONENT HEADS AND CAPABILITY MANAGERS. Component Heads and Capability Managers will, to support DCMA compliance with timelines as designated by law, be responsive to FOIA requirements and ensure their employees process any assigned FOIA actions as a priority.

2.8. OFFICE OF GENERAL COUNSEL. In addition to the requirement listed in paragraph 2.7., the General Counsel (GC) will:

- a. Provide FOIA legal expertise for Agency FOIA officials.
- b. Expeditiously review all FOIA responses referred to GC by the Agency FOIA Officer and FOIA Managers.
- c. Coordinate with the FOIA Officer to establish uniform procedures for Agency processing of FOIA requests.
- d. Expeditiously review all FOIA administrative appeals referred to GC by the Agency FOIA Officer for legal analysis.
- e. Assist in the preparation of routine and annual reports.
- f. Support all FOIA litigation, including acting as the DCMA liaison to DoD Office of General Counsel (OGC).

2.9. OPERATIONAL UNIT COMMANDERS/DIRECTORS. In addition to the requirement listed in paragraph 2.7., the Operational Unit Commanders/Directors will ensure that personnel tasked to search for documents and make recommendations concerning application of exemptions perform those responsibilities expeditiously

2.10. EXECUTIVE DIRECTOR, CORPORATE OPERATIONS (DC). In addition to the requirement listed in paragraph 2.4., the Executive Director, DC will provide oversight for the FOIA program.

SECTION 3: FOIA REQUEST 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. FOIA requests received by any DCMA activity or employee will be immediately forwarded to the DCMA Headquarters FOIA Office (HQ FOIA). Requests will be tracked throughout processing. In many cases, the complexity of the request and/or volume of information to be collected, reviewed and potentially redacted will impact the amount of time required to adequately and properly process a request under the FOIA.

3.2. INTAKE. Upon receipt of a FOIA request, the HQ FOIA Office will:

- a. Assign an administrative control number and log the request into the FOIA electronic tracking system.
- b. 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.
- c. Determine if the request is properly directed to DCMA and assess whether other agencies possess equities in any request properly directed to DCMA. If other agencies have equities in the request, HQ FOIA will coordinate with the agencies as appropriate.
- d. Determine if the request is likely to generate DoD departmental-level interest. If so, the DO&C Departmental Level Notification Process procedures must be followed. The procedures are on the resource page for this manual.
- e. Review and assess the request to ensure it meets the initial requirements under the FOIA. These requirements are listed on the resource page for this manual.
- f. Contact the requester to assist in perfecting their request (e.g., clarifying, rescoping, simplifying), if a request does not meet the minimum requirements of the FOIA. The processing timeline may be tolled (i.e., stop the clock) while engaging the requester to perfect their request, but it may be tolled for this purpose only once for each request.
- g. Submit the request to the FOIA Officer, when a properly perfected FOIA request includes either a request for fee waiver and/or expedited processing. The FOIA Officer will issue an initial determination on whether to grant the fee waiver and/or request for expedited processing.

3.3. 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 include referrals, consultations, and misdirected requests.

a. Referrals. If some or all of the records located, while conducting a search for responsive records, are non-Agency records, then those responsive records must be referred to the originating agency or the organization having cognizance over those records for a release determination and a direct response to the requester. Referrals must be made within 10 working days of DCMA receiving the FOIA request. 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 having cognizance over portions of those records.

(1) 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 FOIA office must be contacted in advance to ensure the referral is accepted and to obtain the appropriate contact information.

(2) The requester must be advised of the referral and provided contact information for the cognizant originating agency or applicable DoD component.

b. Consultations. When it is determined that another agency may have a valid interest or equity in a DCMA record (or a portion of a DCMA record), that record must be forwarded to the consulting agency by the FOIA Manager for the purpose of soliciting input on the release determination.

(1) The consulting agency should be instructed to review the records and return the package with release recommendation to DCMA for response to the requester. The consulting agency's response should include any FOIA exemption cited, should identify the IDA and AA and provide contact information for those two officials.

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

(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) Consultations from other components will be reviewed and deliberative recommendations as to release will be memorialized. If all or any portions of the records are recommended to be withheld, the appropriate DCMA IDA will approve such withholdings as part of the IDA's correspondence. The correspondence must include the exemptions relied upon for the withholding, identify the IDA and provide the AA's contact information

c. 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, a misdirected request is one that is received by DCMA in error and must be transferred to the appropriate agency for action. Requests received in error, absent unique or mitigating circumstances, must be transferred within 10 working days.

(1) Requests will not be transferred until the appropriate FOIA office is contacted by the FOIA Manager and agreement is reached to transfer the request. The receiving office will be advised of the original receipt date.

(2) The requester will be advised by the HQ FOIA office the request was received in error and is being transferred. The requester will be provided the contact information for the agency FOIA office that accepted the referral.

3.4. RECORDS SEARCH.

a. The HQ FOIA analyst/manager will determine which DCMA offices are likely to have responsive records and will assign the request to the applicable FOIA Manager. A FOIA Manager is assigned at each of the geographic region components and the International Directorate. A FOIA analyst/manager is assigned at the HQ. Due to workload variances, some FOIA requests may be assigned to a specific FOIA Manager or analyst even though it may be most applicable to another one.

b. The FOIA Manager will task the applicable DCMA office(s) to conduct a search for responsive records.

c. Requests will be interpreted liberally when determining which records are responsive to the requests. The presumption is in favor of the record being responsive.

d. Records containing both responsive and non-responsive information will be considered responsive.

e. The office(s) searching for responsive documents must consider the reasonable locations of likely responsive records, including both electronic and hard copy records. Searches must be tailored and reasonably calculated to uncover all relevant records. This may include the need to search through the records of multiple functions within the component. If the office(s) conducting the search believes a separate DCMA component may have records responsive to the request, the FOIA Manager must be notified.

f. 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.

g. Only existing Agency records are considered responsive documents. The record(s) must exist at the time of the search. Any document created after the search for responsive records is considered non-responsive.

h. All practicable avenues must be considered before making and certifying a determination that no record could be found. It can never be assumed there is no record because the subject of the request is old.

i. A Verification of Adequacy of FOIA Search or No Records Certificate form, located on the resource page for this manual, must be fully completed by each individual assigned to conduct a search for responsive records, and such verification or form must be submitted to the applicable FOIA manager or analyst.

3.5. REVIEW OF RESPONSIVE RECORDS FOR FOIA EXEMPTIONS. Records found during the search will be reviewed to determine if any information in the records is exempt from disclosure under the FOIA.

a. The component(s) submitting responsive records may make written recommendations to the FOIA Manager concerning the releasability of the records. Citations to any non-FOIA guidance pertaining to the public release of responsive information should be included.

b. The individual designated to review the responsive records and apply exemptions shall identify and recommend whether responsive records are protected (exempt) from release under the FOIA. Implications of the Privacy Act and other statutory and regulatory provisions must be considered.

3.6. REDACTION OF EXEMPT INFORMATION. Only the Agency-approved method will be used for redaction of information exempt under the FOIA. Details regarding the approved redaction method are set forth on the resource page for this manual.

3.7. RESPONSE PACKAGE.

a. Types of FOIA Responses.

(1) **Granted in Full.** All of the records found to be responsive are provided to the requester without redaction.

(2) **Partial Denial.** Some of the records found to be responsive are either withheld in whole or are redacted.

(3) **Full Denial.** A full denial is appropriate in the following circumstances:

- No responsive records exist.
- Responsive records were discovered, but they were not DCMA records. In this situation, DCMA must refer the response records to the agency with release authority and cognizance over such records.
- Requested records were not reasonably described.
- Request was transferred to another agency (e.g., misdirected requests).
- Fee-related reasons (e.g., unwillingness to pay).
- The requester withdrew the request.
- The requester submitted a duplicate request.

b. Response Package Preparation. Templates and details on assembling the response package are available on the resource page for this manual.

(1) Granted in Full responses may be signed by the FOIA officer, FOIA analyst, FOIA manager, or the authority indicated in the FOIA tasking. The letter must include:

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

(2) All Partial Denial and Full Denial responses must be signed by an IDA. The letter must include:

- Summary of requested records.
- Details regarding the exact searches undertaken.
- Full/detailed explanation of exempt information.
- Summary of information being withheld in a full denial, to include number of pages.
- Requester's fee category, fee calculation, balance due, and payment instructions.
- If no fees are assessed, a statement to that effect.
- Instructions to send checks payable to "U.S. Treasurer" to FOIA Manager.
- Contact information for the DCMA FOIA Public Liaison.
- Contact information for the OGIS.
- Administrative appeal rights.

(3) When responding to a request for multiple items, the response must include a line-item summary in bullet form, listing each item and describing its disposition. The requester must receive a thorough accounting of the individual dispositions.

b. Administrative Record. Thorough documentation of the processing actions for each FOIA request must be maintained to support all FOIA processing actions. Details on the documentation of the processing actions are on the resource page for this manual.

c. Record of Responses. A record will be maintained of all FOIA responses. Details on the recordkeeping are on the resource page for this manual.

d. Records Retention. All FOIA records, to include case folders and status lists should be maintain for six years and three months AFTER the FOIA is closed, upon response to the requester. All FOIA administrative appeal records should be maintained for six years and three months AFTER the administrative appeal is responded to and closed.

3.8. STATUTORY TIME PERIODS AND TOLLING. The statutory time period to make a release determination on a FOIA request is 20 working days. The time period begins on the date a perfected request is received by the FOIA office.

a. Exceptions to the Statutory Time Period.

(1) When unusual circumstances prevent a final response determination from being made within the statutory time period, the requester will be advised in writing and given an opportunity to narrow the scope of the request. Unusual circumstances include:

(a) The need to search for and to collect responsive records from Agency field offices or other organizations which are separate from the office processing and managing the FOIA request.

(b) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records.

(c) The need for consultation, which will be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more DoD Components having substantial subject-matter interest in the records.

(2) Interim responses will be provided to the requester when a final determination cannot be made within the statutory 20 working days. These communications may include acknowledging receipt of the FOIA request and negotiating with the FOIA requester concerning the scope of the FOIA request, the response timeframe, and the fee agreement. However, such communications do not constitute a final response determination. The initial interim response will include, at a minimum:

(a) The date the 20-working-day statutory time period started for the FOIA request.

(b) The tracking number for the FOIA request.

(c) Contact information concerning how the FOIA requester can obtain information about the processing of the FOIA request.

b. Tolling. The statutory time period may be tolled for two reasons. In both situations, the requester's response to the Agency's request ends the tolling period.

(1) The time period may be tolled one time when the FOIA requester is reasonably asked for additional information other than that connected to the assessment of fees.

(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.

c. Consequences for Failure to Respond within Required Time Limits.

(1) Requesters may initiate FOIA litigation if DCMA fails to respond within the required time limits. FOIA litigation has the potential to be costly and to expend limited resources. If the requester-complainant prevails, the requester-complainant may seek and/or potentially recover

legal fees incurred in prosecuting the litigation. Accordingly, it is extremely important that FOIA requests are properly prioritized and that written records of processing and communications with requesters are created and maintained.

(2) Individual employees may be subject to disciplinary action as well as civil and criminal penalties under certain circumstances for failing to comply with the FOIA.

(3) The Agency cannot assess search fees if it fails to comply within required time limits unless unusual circumstances apply and unless the requester is notified within 20 working days from receipt of a perfected request.

3.9. FOIA LIBRARY. DCMA will maintain a FOIA library to make records available in electronic format in accordance with the FOIA and DoDM 5400.07. A record will be uploaded to the electronic DCMA FOIA Library for easy access by the general public when a certain record is requested on more than three occasions by separate requesters.

SECTION 4: FOIA EXEMPTIONS

4.1. GENERAL PROVISIONS.

a. Information responsive to a FOIA request will be withheld only if the Agency reasonably foresees that disclosure would harm an interest protected by one or more of the FOIA exemptions, or disclosure is prohibited by law. Under this standard, the content of a particular record should be reviewed and a determination made as to whether the Agency reasonably foresees that disclosing it, given its age, content, and character, would harm an interest protected by the applicable exemption. Mere speculative or abstract fears, or fear of embarrassment, are an insufficient basis for withholding information.

b. Nine types of exempt information in records may be withheld, in whole or in part, from public disclosure unless otherwise proscribed by law. In general, a release of a record to one FOIA requester prevents the withholding of the same record pursuant to a FOIA exemption if the record is later requested by someone else. FOIA exemptions are described in paragraph 4.2. of this manual.

c. When information contained within a record is exempt from release, the Agency will consider whether a partial release of the record is possible by taking reasonable steps to conduct a line-by-line review to segregate and release nonexempt information contained within the record.

d. In applying exemptions, the identity of the FOIA requester and the purpose for the FOIA request are irrelevant; however, an exemption may not be invoked when the particular interest to be protected is the FOIA requester's interest. For example, privacy information concerning an individual would not be withheld from that individual if the requester seeks such information under the FOIA unless another exemption is applicable.

e. 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 another reason to withhold the information, sensitive and/or proprietary information does not need to be redacted. The release letter must explicitly state, however, that the information is being provided as a first-party release. Any subsequent requests by non-first party requesters for the same records must be treated as an entirely new request and appropriate exemptions must be applied.

f. If admitting the fact of the existence or nonexistence of a record responsive to a FOIA request would itself reveal information protected from release by one of the nine exemptions, the response must neither confirm nor deny the existence or nonexistence of the requested record. This is commonly called a "Glomar" response. This "refusal to confirm or deny" response must be used not only when a record exists, but also when a record does not exist. If not used consistently, the pattern of a "no record" response when a record does not exist, and a "refusal to confirm or deny" when a record does exist, risks disclosing exempt information.

4.2. FOIA EXEMPTIONS. This paragraph describes in general the nine types of exempt information in records. They are described in more detail in DoDM 5400.07 and on the resource page for this manual.

a. Exemption 1. Records properly and currently classified in the interest of national defense or foreign policy, pursuant to an existing Executive Order (EO), are exempt from disclosure.

b. Exemption 2. Records related solely to the internal personnel rules and practices of the agency.

c. Exemption 3. Records concerning matters that another statute specifically exempts from disclosure or establishes criteria for withholding. The DO&C maintains a list of Exemption 3 information and statutes used within DoD on the FOIA section of the DoD Open Government Website, including, but not limited to:

(1) Personally Identifying Information (PII) of DoD Personnel in overseas, sensitive, or routinely deployable units.

(a) The DoD Components may make discretionary releases of names and duty information of personnel in overseas, sensitive, or routinely deployable units who, by the nature of their position and/or duties, frequently interact with the public. Officials whose identities may be released include general and flag officers, PAOs, other persons designated as official spokespersons, and other senior officials whose identities are known to the public through the performance of their duties.

(b) This provision does not change DoD issuances for PAOs and the rules used to release information to the general public and the media. Information should continue to be released in accordance with current DoD issuances, Privacy Act, and security classifications.

(2) Sensitive Information of Foreign Governments and International Organizations.

(3) Critical Infrastructure Security Information (CISI).

(4) Military Flight Operations Quality Assurance (MFOQA) System Data Files.

d. Exemption 4. Certain non-government financial information, including but not limited to contractor proprietary information, confidential commercial or financial information, and trade secrets which are privileged or confidential and obtained from a person or entity outside the U.S. Government. DCMA will comply with the predisclosure notification procedures for confidential commercial information specified in EO 12600 when processing a FOIA request for records containing such information.

e. Exemption 5. Inter- or intra-agency memoranda or letters containing information considered privileged in civil litigation. Merely being an internal record is an insufficient basis for withholding pursuant to this exemption. To qualify as exempt pursuant to Exemption 5, a document must meet the threshold requirement of being an inter- or intra-agency document and must be subject to various privileges typically cited in civil discovery, including but not limited

to, the deliberative process privilege, the attorney-client privilege, the attorney work product privilege, the government trade secrets privilege, the safety investigation privilege or the presidential communication privilege.

f. Exemption 6. Information in personnel, medical, and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. If the information qualifies as Exemption 6 information, DCMA has no discretion to release it. The potential disclosure does, however, exist of PII pertaining to agency officials who routinely interact with the public.

g. Exemption 7. Records or information compiled for law enforcement purposes if one of six conditions exist. Those conditions are on the resource page for this manual.

h. Exemption 8. Records in or related to examination, operation, or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions.

i. Exemption 9. Records containing geological and geophysical information and data (including maps) concerning wells.

SECTION 5: APPEALS AND LITIGATION

5.1. APPEALS. Regardless of the DCMA addressee or recipient, all appeals must be immediately forwarded to the FOIA Officer. Adjudication of FOIA administrative appeals are managed and coordinated by the FOIA Officer with the support and assistance of interested stakeholders. A requester previously receiving an adverse determination in response to a FOIA request may seek redress and reconsideration from the Agency's administrative appellate 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.

a. Appeal Rights. Any adverse determination made by the Agency must be communicated to the requester in writing. The denial letter must provide instructions on how the requester can appeal the adverse determination, including:

- the appellate authority's duty title and mailing address for the appeal;
- instructions on how the requester can appeal electronically;
- to be timely, any appeal must be postmarked or electronically transmitted no later than 90 days after the date of the denial letter; or
- a statement advising the requester of their right to seek dispute resolution services from the DCMA FOIA Public Liaison or OGIS.

b. 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. Final determinations on appeals normally will be made within 20 working days after receipt. Requesters shall be advised if the delay exceeds the statutory requirements.

5.2. LITIGATION. Any FOIA litigation filed against DoD naming DCMA as a party to the complaint will be processed in accordance with DoDM 5400.07. The HQ Office of General Counsel, in conjunction with the HQ FOIA Officer, will provide assistance and case review, as appropriate, with DO&C, the Office of the Secretary of Defense Office of Counsel, and the Department of Justice.

SECTION 6: FOIA REPORTING

6.1. ANNUAL DOD FOIA REPORT. The DoD FOIA Report to the U.S. Attorney General and the Director of Office of Government Information Services is required each fiscal year in accordance with Section 552 of Title 5, U.S.C. DoD components are required to provide input to the DoD report. DO&C sets the suspense date for submitting the report. The DCMA input will be prepared by the FOIA Officer, reviewed by the FOIA Public Liaison, and approved by the Executive Director, DC. Instructions for preparing the most recent report will be posted on the resource page for this manual.

6.2. ANNUAL DOD CHIEF FOIA OFFICER'S REPORT. Federal 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 DoD Chief FOIA Officer's Report is required each year and is generally due to DO&C in mid-December. It will be prepared by the FOIA Officer, reviewed by the FOIA Public Liaison, and approved by the Executive Director, DC. Instructions for preparing the most recent report will be posted on the resource page for this manual.

6.3. MONTHLY DOD FOIA REPORT. DO&C requires DoD components to submit a monthly FOIA report. It will be prepared by the FOIA Officer and approved by the FOIA Public Liaison. Instructions for preparing the most recent report will be posted on the resource page for this manual.

GLOSSARY

G.1. DEFINITIONS.

Appellate Authority. The DoD Component head, or management official appointed in writing by name or position by the Agency Director, having authority to receive, review and adjudicate an administrative appeal under the FOIA. The AA may uphold the decision of the IDA, reverse that decision, remand the matter for further action or amend any initial disclosure decision.

Appeal. A request by a member of the public, made pursuant to the FOIA, asking the appellate authority of a DoD Component to reverse, modify, or reconsider any adverse determination.

Agency Record. Includes all documents or records created or obtained by a U.S. Government agency that are in the agency's possession and control at the time a FOIA request is received. Four factors determine an agency's control:

- The intent of the creator of the document to retain control over the record.
- The ability of the agency to use and dispose of the record as it sees fit.
- The extent to which agency personnel have read or relied upon the document.
- The degree to which the document was integrated into the agency's record systems or files. Records maintained by a government contractor for records management purposes are considered in the DoD Component's possession. Records created by an agency employee during employment, including e-mails, may be either agency records or personal files.

Examples of agency records include:

- Research data produced during the performance of a federal grant used by the U.S. Government in developing an agency action that has the force and effect of law, in accordance with Office of Management and Budget Circular No. A-110.
- All recorded information, regardless of form or characteristics. "Form or characteristics" refers to physical media type or transmission mode desired by the FOIA requester (e.g., computer disk, computer tape, file transfer protocol, photographs, videotape, and microfiche).

Examples of agency records do not include:

- Objects or articles such as structures, furniture, vehicles, and equipment, whatever their historical value or value as evidence.
- Anything that is not a tangible or documentary record, such as an individual's memory or oral communication.
- Personal files.
- The definition of an agency record under the FOIA is more expansive than the definition of a federal record. For example, documents such as drafts and working files are not considered official records, but are still agency records responsive to FOIA requests.

CISI. Sensitive but unclassified information that, if disclosed, would reveal vulnerabilities in DoD critical infrastructure that, if exploited, would likely result in the significant disruption, destruction, or damage of or to DoD operations, property, or facilities. This could include information regarding the securing and safeguarding of explosives, hazardous chemicals, or pipelines, related to critical infrastructure or protected systems owned or operated by or on behalf of the DoD. Vulnerability assessments prepared by or on behalf of the DoD, explosives safety information (including storage and handling), and other site-specific information on or relating to installation security may be included.

Consultation. The process whereby, in certain situations, a federal agency transfers a document responsive to a FOIA request to another federal agency or non-government entity to obtain recommendations on the releasability of the document. After review, the document is returned to the original agency for response to the FOIA requester or further review.

Electronic Records. Records (including e-mail) created, stored, and retrievable by electronic means.

Expedited Processing. A request seeking exceptional consideration in processing the request in an accelerated manner. The requester must demonstrate that (1) the failure to obtain records quickly could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or (2) the requester is a person primarily engaged in disseminating information and that an urgency to inform the public about Federal Government activity exists.

First-party Requester. A FOIA requester seeking information about himself/herself.

FOIA Public Liaison. A supervisory official to whom a FOIA requester can raise concerns about the service the FOIA requester receives from a FOIA Requester Service Center (RSC) and who is responsible for assisting in reducing delays, increasing transparency and understanding of the status of requests, and assisting in the resolution of disputes.

FOIA Request. A written request for agency records that reasonably describes the records sought, enabling a DoD Component employee familiar with the files to locate the records with a reasonable amount of effort.

FOIA Requester. Any person, including a partnership, corporation, association, State or State agency, foreign government, foreign national, or a lawyer or other representative acting on behalf of any person who submits a FOIA request. This definition specifically excludes agencies within the Executive Branch of the U.S. Government.

FOIA RSC. A DoD Component office that receives FOIA requests from and responds directly to the public on the status of their request.

Form. The storage media that holds content in digital form on which responsive information is provided to FOIA requesters. Examples are electronic documents, audiovisual material on tape, and all storage media that hold content in digital form and that are written and read by a laser (e.g., all the various compact disk and digital video disk variations).

Glomar Response. A response to a FOIA request where the DoD Component neither confirms nor denies the existence or nonexistence of records responsive to the FOIA request.

IDA. An official who has been granted authority by a DoD Component head to withhold information requested pursuant to the FOIA for one or more of the nine categories of records exempt from mandatory disclosure, as described in Section 5.

Misdirected FOIA request. A FOIA request that is addressed to an agency but should have been sent to a different agency. For example, a FOIA requester sends a request for an Air Force contract to DCMA.

Non-responsive. Information or records not requested by a FOIA requester.

Perfected FOIA request. A FOIA request that arrives at the FOIA Requester Service Center of the DoD Component in possession of the records. The statutory time limit for responding to a FOIA request does not begin until it is perfected. A perfected request must be in writing, contain enough specificity that a reasonable search can be conducted, have requester contact information and a statement of a willingness to pay fees.

Personal File. Documents unrelated to the conduct of agency business or indirectly related to agency business but outside the scope of agency records. A personal file is not subject to the FOIA.

Referral. The process whereby a DoD FOIA Program Component receiving a FOIA request locates documents originating with another DoD Component or federal agency. Accordingly, the FOIA request and documents are transferred to the originating DoD Component or federal agency for response directly to the FOIA requester.

Responsive. Information or agency records requested by a FOIA requester.

Toll. To delay, suspend, or hold off the effects of a statute.

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; or (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.

GLOSSARY

G.2. ACRONYMS.

AA	Appellate Authority
CFR	Code of Federal Regulations
CISI	Critical Infrastructure Security Information
DC	DCMA Corporate Operations Directorate
DCMA INST	DCMA Instruction(s)
DoDD	DoD Directive
DoDM	DoD Manual
DoD OGC	DoD Office of General Counsel
DO&C	DoD Directorate for Oversight and Compliance
EO	Executive Order
FOIA	Freedom of Information Act
GC	General Counsel
HQ	headquarters
IDA	Initial Denial Authority
OGIS	Office of Government Information Services
PAO	Public Affairs Officer
PII	Personnally Identifying Information
RSC	Requester Service Center
U.S.C.	United States Code

REFERENCES

- Code of Federal Regulations, Title 32, Part 286
- Department of Justice “Guide to the Freedom of Information Act,” current edition
- DoD Directive 5105.64, “Defense Contract Management Agency (DCMA),” January 10, 2013
- DoD Directive 5400.07, “DoD Freedom of Information Act (FOIA) Program,” January 2, 2008
as amended
- DoD Manual 5400.07, “DoD Freedom of Information Act (FOIA) Program,” January 25, 2017
- Executive Order 12600, “Predisclosure Notification Procedures for Confidential Commercial
Information,” June 23, 1987
- Office of Management and Budget Circular No. A-110, "Uniform Administrative Requirements
for Grants and Agreements With Institutions of Higher Education, Hospitals and Other Non-
Profit Organizations," November 19, 1993, as amended
- Secretary of Defense Memorandum, “Requirements for the DoD FOIA Annual Report,”
September 22, 2008
- United States Code, Title 5, Section 552 (also known as “The Freedom of Information Act
(FOIA)”)
- United States Code, Title 10, Section 130e