



# DCAA FREEDOM OF INFORMATION ACT PROCESSING GUIDE

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Office of the General Counsel

Each year DCAA receives approximately 100 Freedom of Information Act (FOIA) requests for access to its records. Under the terms of the Act, DCAA must decide whether to comply with each request (within 20 working days of receiving it), and must disclose all records requested unless there is a specific statutory reason for exempting the information from disclosure. Gathering and reviewing the information for these FOIA requests may involve DCAA staff in every office and division.

What is the rationale behind the Act, and how can the task of fulfilling the obligations imposed by it be made somewhat easier? How do you find the records that are subject to a request and how do you determine what records or what portions of them should be withheld?

This guide has been prepared to answer these questions. It is designed for both those employees who come in contact with the FOIA infrequently and those who have direct FOIA responsibilities as part of their normal day-to-day duties.

In general, each chapter and section of this guide is organized to highlight the general principles first, followed by more detailed information and exceptions to these principles.

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## **CHAPTER 1 - OVERVIEW**

The Freedom of Information Act (FOIA) was enacted in 1966 and became law on July 4, 1967. It was the first of four statutes designed to open the processes and records of the Federal government to public scrutiny.

Passage of this landmark legislation was preceded by a decade of study and hearings to pierce what was called the U.S. Government's "paper curtain." In a June 9, 1955, letter from then Congressman William Dawson, Chairman of the House Government Operations Committee, to Congressman John Moss establishing a Special Subcommittee on Government Information to investigate secrecy in the Government, Congressman Dawson stated:

**“An informed public makes the difference between mob rule and democratic government. If the pertinent and necessary information on governmental activities is denied the public, the result is a weakening of the democratic process and the ultimate atrophy of our form of government.”**

Although Section 3 of the Administrative Procedure Act of 1946 provided that all agency records must be open for public inspection unless the agency found for good cause that the records should be held confidential, the agencies themselves decided what was "good cause." The Subcommittee found that the statute had come to be looked upon as more of a withholding statute than a disclosure statute.

In enacting the FOIA and its subsequent amendments, Congress established for the first time an effective statutory right for public access to government information. The Act provides that all records of a Federal agency must be released upon a request from any person unless the records fall within one of the nine exemptions specified in the Act; that the exemptions are to be interpreted narrowly, and that even if a record is exempt from disclosure, an agency generally has the discretion to release it anyway. In a 1978 case, the Supreme Court described the purpose of the FOIA in words similar to those used by Congressman Dawson in 1955, saying:

**“The basic purpose of the FOIA is to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed.”**

### **Description of the Department's Regulation**

The Department of Defense's regulation implementing the FOIA is set forth in Title 32 of the Code of Federal Regulations (32 CFR Part 286). The regulation discusses the procedures for requesting copies of records, the Act's exemptions, initial determination and appeal procedures, fees, and requests for the waiver or reduction of fees.

## Summary of the FOIA

The complete Act, as amended, is included in this guide in Appendix A. The main provisions are as follows:

Any person has a right, enforceable in court, of access to Federal agency records, unless those federal records are protected from disclosure by one of nine exemptions.

Federal agencies must automatically disclose the following kinds of information by publication in the Federal Register, descriptions of the agency's organization; how, where, and from whom the public may obtain information; the agency's rules of procedure; and statements of general policy.

Unless these items are published in the Federal Register, a person may not be adversely affected by them unless that person has actual knowledge of their contents.

Each agency must make available for public inspection and copying:

final opinions made in the adjudication of cases;

statements of policy that have been adopted by the agency, but have not been published in the Federal Register;

administrative manuals and instructions to staff that affect members of the public; and

a record of final votes in agency proceedings.

Federal agencies must publish a schedule of FOIA fees in the Federal Register.

Federal agencies have 20 business days, excluding Saturdays, Sundays, and legal holidays to determine whether to comply with a FOIA request for records. (This period does not begin until the request is actually received by the FOIA office). If an agency refuses and there is an appeal, the agency has 20 working days to respond to the appeal. These time limits may be extended for an additional ten business days under "unusual circumstances" (the need to collect records from field facilities, the need to search for or collect a voluminous amount of records, or the need to consult with another agency or another component of the same agency). When such a time extension is needed, the DCAA may notify the requester and offer them the opportunity to modify or limit their request. Alternatively, we may agree to a different timetable for the processing of the request. Nevertheless, if the agency does not comply within these time limits, the requester may sue the agency in court. The key consideration in this process, however, is to keep the requester informed.

There are nine specific exemptions under which an agency may withhold requested information. Exemptions (1), (3), (6), and (7)(c) are mandatory. The other six are discretionary exemptions. These include records that are summarized as follows:

- (1) Specifically authorized to be kept secret in the interest of national defense or foreign policy, and are properly classified;
- (2) Related solely to the internal personnel rules and practices of an agency;
- (3) Specifically exempted from disclosure by statute;
- (4) Trade secrets and commercial or financial information obtained from a person that is privileged or confidential;
- (5) Interagency or intra-agency memorandums or letters which would not be available by law to a party in litigation with the agency;
- (6) Personnel, medical, and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
- (7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:
  - (a) could reasonably be expected to interfere with enforcement proceedings,
  - (b) would deprive a person of a right to a fair trial or an impartial adjudication,
  - (c) could reasonably be expected to constitute an unwarranted invasion of personal privacy,
  - (d) could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency, or authority, or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source,
  - (e) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of a law, or
  - (f) could reasonably be expected to endanger the life or physical safety of any individual;
- (8) Related to certain reports prepared by or for an agency responsible for regulating financial institutions; or
- (9) Geological and geophysical information and data, including maps, concerning wells.

Any "reasonably segregable" portion of a record must be provided to any person who requests that record after exempt portions have been deleted.

The Act may not be used to withhold information from Congress.

Each agency must submit an annual report to Congress on its FOIA actions, including the names of all agency personnel responsible for the denial of records. Generally, office directors and regional administrators are identified as the officials denying records for which their offices are responsible.

## **CHAPTER 2 - WHAT RECORDS ARE SUBJECT TO FOIA DISCLOSURE?**

### **Highlights**

Agency records refer to all information, including computer records, in the possession and control of DCAA that were created or obtained for an agency purpose.

Records received from applicants, contractors, and others pertaining to DCAA's regulatory functions are also agency records.

An individual's personal records, defined as follows, are not subject to a FOIA request:

Records in the possession of DCAA personnel that have not been circulated, were not required to be created or retained by the Agency, and can be retained or discarded at the author's sole discretion, or records of a personal nature that are not associated with any Government business.

All agency records within the scope of the request must be identified in response to a FOIA request. The staff does not have the discretion to decide what may be important or unimportant to a requester.

The mere fact that a record must be identified does not mean that it must be made public; it may still be withheld under one or more of the nine FOIA exemptions and after consideration of the foreseeable harm standard.

Good records management practices require that DCAA's official files and individual staff files be reviewed periodically to remove obsolete and unwanted material.

### **What is an Agency Record?**

The FOIA applies only to agency records. Although the Act does not thoroughly define the word record, "*any information that would be an agency record subject to the requirements of this section when maintained by an agency in any format, including an electronic format,*" most agencies have adopted a definition similar to that appearing in the Federal Records Act. DCAA defines "records" as follows:

The products of data compilation, such as all books, papers, maps, and photographs, machine readable materials or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government under Federal law in connection with the transaction of public business and in DCAA's possession and control at the time the FOIA request is made.

The following are not included within the definition of the word "record":

Objects or articles, such as structures, furniture, vehicles and equipment, whatever their historical value or value as evidence.

Administrative tools by which records are created, stored, and retrieved, if not created or used as sources of information about organizations, policies, functions, decisions, or procedures of the Agency. Normally, computer software, including source code, object code, and listings of source and object codes, regardless of medium are not Agency records. (This does not include the underlying data which is processed and produced by such software and which may in some instances be stored with the software).

Anything that is not a tangible or documentary record, such as an individual's memory or oral communication.

Personal records of an individual not subject to agency creation or retention requirements, created and maintained primarily for the convenience of an Agency employee, and not distributed to other Agency employees for their official use.

Information stored within a computer for which there is no existing computer program for retrieval of the requested information.

In some instances, computer software may have to be treated as an Agency record and processed under the FOIA. These situations are rare, nonetheless, they shall be treated as an Agency record:

When the data is embedded within the software and cannot be extracted without the software. In this situation, both the data and the software must be reviewed for release or denial under the FOIA.

Where the software itself reveals information about organizations, policies, functions, decisions, or procedures of the Agency, such as computer models used to forecast budget outlays, calculate retirement system costs, or optimization models on travel costs.

A record must exist and be in the possession and control of the Agency at the time of the request to be considered subject to the FOIA. There is no obligation to create, compile, or obtain a record to satisfy a FOIA request.

If unaltered publications and processed documents, such as regulations, manuals, maps, charts, and related geophysical materials are available to the public through an established distribution system with or without charge, the provisions of 5 USC 552(a)(3) normally do not apply and they need not be processed under the FOIA. Normally, documents disclosed to the public by publication in the Federal Register also require no processing under the FOIA. In such cases, DCAA organizational elements should direct the requester to the appropriate source to obtain the record.

### **Must DCAA Possess the Record?**

To be subject to the FOIA under DCAA's regulations, a record has to be under the possession and control of the Agency pursuant to Federal law. In other words, it has to be in the physical possession and control of DCAA for an Agency purpose.

## **Must the Record Exist When Requested?**

The FOIA applies only to records in existence at the time a FOIA request is received by the Agency. If the records have already been destroyed, or the record does not yet exist or does not exist in the form requested, there is no obligation to recreate an old record or to create a new record to satisfy a FOIA request. With respect to information contained in a computer system, there is also no obligation under the FOIA to write a special program to obtain a printout of the information in a format desired by the requester. On the other hand, there is no prohibition against creating a new record or writing a special program if it can be done more easily than searching for the original records and deleting large amounts of exempt material.

## **What Have the Courts Ruled About Agency Records?**

The Supreme Court has observed that through the enactment of the FOIA, Congress sought to open agency action to the light of public scrutiny by requiring agencies to adhere to a general philosophy of full agency disclosure. Flowing from this concept, the Supreme Court has held that there are two prerequisites that must be met before a record is considered an agency record. First, the agency must either create or obtain the requested materials. In this regard, the Court noted that in performing their official duties, agencies routinely avail themselves of studies, trade journal reports, and other materials produced outside the agencies both by private and governmental organizations. Therefore, to restrict the term "agency records" to materials generated internally would frustrate Congress' desire to put within public reach the information available to an agency in its decision-making processes.

The second prerequisite is that the agency must be in control of the requested materials at the time the FOIA request is made. By control, the Court stated that it meant that the materials came into the agency's possession in the legitimate conduct of its official duties. Along this line, the Court specifically rejected the contention that the outside materials had to have been prepared to be relied upon in the agency decision-making.

## **How Do Personal Records Become Agency Records?**

In some cases, personal records, regardless of format, can become agency records at a later date:

If the records are shown to another member of the staff. (DCAA then assumes that the records are being used to transmit official agency information.)

If the records are filed in branch or office files as opposed to someone's personal files.

If the records are commingled with agency records as part of an ongoing working file.

If the records are used as the basis of taking an agency action.

On the last point, courts have held that a supervisor's notes of discussions with employees remain the personal property of the supervisor, unless they are filed under the employee's name or other identifier, and thus become subject to the provisions of the Privacy Act. Even when they are personal, they cannot be used to "ambush" an employee. (In a 1982 case, a supervisor gave an employee satisfactory performance ratings for two years while simultaneously collecting adverse data. These data were later used as the basis for firing the employee. The court said that the personal notes lacked the timeliness of incorporation into agency records necessary to assure fairness under the Privacy Act. "Such an approach to the maintaining of records on employee job performance is not consistent with the Privacy Act." Additionally, once the notes are used by the agency to make a decision concerning an individual's employment status, the notes become subject to the provisions of the Freedom of Information Act.)

Saying that, three caveats must be mentioned. First, it is contrary to Federal law to remove from DCAA files the record copy of a record except in accordance with the Records Disposal Act. If such a record is removed and later located, it would still be an Agency record. Second, the intent in removing the records cannot be to avoid the FOIA when the staff person has every intent to bring the records back when later needed for an Agency purpose. Third, an employee should not remove Agency records for non-Agency purposes where the records have not been made public by the Agency and which DCAA must protect from public disclosure.

### **What Kinds of Records Must be Kept and for How Long?**

Under the Federal Records Act, each agency is required to keep records of the agency's organization, decisions, procedures, and practices. Under the Records Disposal Act administered by the General Services Administration (GSA), GSA has provided schedules by which various types of records common to most Federal agencies may be retired or destroyed after a specified number of years. DCAA's records schedule is contained in DCAAM 5015.1, Files Maintenance and Disposition Manual. The official record copy of records listed in the schedule may not be destroyed until the period specified has elapsed, and in some cases the records must first be offered to the Archivist of the United States for permanent retention.

The GSA and DCAA records disposal schedules have a category of records referred to as "non-record material." These are records which are retained by individuals for convenience or reference, and which may be destroyed when the records are no longer needed or when their purpose has been served. Examples of non-record material are:

- extra copies of official records
- drafts
- work papers
- computations
- informal notes

At the time a FOIA request is received by the Agency, all agency records, both official record copies and non-record material, become subject to the request. No records may be destroyed after a FOIA request is received until copies have been provided in response to the

request. While any of these records may be withheld from public disclosure if they fall within one of the nine exemptions specified in the FOIA, the records must be addressed in the response letter.

From a records management standpoint and to avoid unnecessary staff time searching for records, the staff should cull official office files and individual staff files periodically to remove obsolete and unwanted material. Recognizing that many people tend to be savers, some offices may deal with this problem by establishing a policy that all records required to substantiate an office decision or action are to be kept in the office's official files, including both record and non-record material. The advantage of this procedure, if diligently administered, is that it provides a discrete file of all relevant records. It also assures that management is aware of all staff views that could be addressed in a hearing or other public forum.

The disadvantages are that such a procedure is difficult to administer and, even if put in practice, it will always be necessary to search both official and individual staff files in response to FOIA requests.

### **What are the Guidelines for E-Mail Records Determinations?**

The Agency makes extensive use of electronic communications, specifically e-mail, to support its missions and functions. This practice has expanded greatly over the past ten years and is now the primary media utilized by DCAA staff to conduct day to day business. As technology advances, we gain even more latitude in the production of actions that are both highly efficient and effective. Our professional communication standard has evolved and is now almost exclusively supported by the resident attributes of the Agency's e-mail system.

One of the key elements to the successful use of e-mail communications is the understanding of its position as an Agency record. Plainly said, if an e-mail is used to support the missions and functions of the Agency, the communication is likely to be considered a record and subject to the retention standards codified in DCAAM 5015.1, Files Maintenance and Disposition Manual. As a record, it is also subject to public scrutiny under the auspices of the Freedom of Information Act. In consideration of these facts, e-mail communications that have value to the issuing or receiving activity, must be properly filed in approved records management systems.

These approved records system are currently the traditional hard copy folders, displaying labels identifying contents and disposition dates, and electronic filing systems. Although electronic communications can be otherwise maintained on our operating system, they cannot be adequately protected from alteration. Only an approved records management system provides this protection.

## **CHAPTER 3 - HOW DOES A FOIA REQUEST GET PROCESSED?**

### **Highlights**

Requesters must submit FOIA requests in writing. DCAA does not accept oral and telephone requests.

Any FOIA request received directly by DCAA staff should be forwarded immediately to the Chief FOIA Officer as indicated at Appendix F. Facsimile transmissions should be used by recipients if a request is received at a management level lower than the Regional level (e.g., FAO, Sub-office).

The Act applies only to requests for existing records. A request for information which has yet to be developed cannot be released or denied under the FOIA. The proper response in this situation is a "no record" determination.

DCAA has 20 working days to make disclosure determinations on each FOIA request.

The Chief FOIA Officer sends FOIA requests to the action office which might reasonably be expected to have copies of records subject to the request.

Action officers having questions about the scope or meaning of a FOIA request should contact the Chief FOIA Officer immediately. A conference call can be held with the requester to resolve any open issues.

All agency records subject to a FOIA request must be identified. This means that all staff members familiar with the subject matter of the request must be contacted and all files expected to contain records must be searched.

The action office responsible for records requested must identify any information in those records which should be withheld under the FOIA, and must state why the information is being withheld.

Records must be reviewed on a line-by-line basis. Entire pages or paragraphs cannot be withheld if only a few words or phrases are exempt from disclosure.

All records requested should be provided to the Chief FOIA Officer, who will prepare a coordinated response for the Agency. The Chief FOIA Officer serves as initial denial authority and will be named in the response as the denying official as applicable.

A requester may appeal to the General Counsel, Office of General Counsel, DCAA if any records have been denied under the FOIA. A "no record" determination and denial of a request for a fee waiver may also be appealed.

### **Where Should FOIA Requests be Sent?**

Under DCAA regulations, FOIA requests must be submitted in writing to the Chief FOIA Officer. If any other member of the staff receives a FOIA request, he or she should send it immediately to the Chief FOIA Officer.

### **Are FOIA Requests Processed Like Routine Information Requests?**

DCAA receives many requests for information; however, only requests which specify that they are FOIA requests are processed as such. Requests which do not specify the FOIA are handled in the normal course of business by the office receiving them. When a FOIA request is received by the Chief FOIA Officer, it is logged in and given a sequential FOIA number. After the request is logged, DCAA has 20 working days in which to respond to the request. Logging the request also commences the period during which records subject to the request may not be destroyed by the Agency.

### **How are FOIA Requests Placed under Control?**

Each request received within the Agency should be placed under administrative control to ensure processing is in compliance with the time limits imposed by the Act. Upon receipt, a request should be time and date stamped by the Chief FOIA Officer. All subsequent correspondence received from the requester or related to the request should also be time and date stamped.

Agency control is centrally maintained by the Chief FOIA Officer, Office of General Counsel, DCAA. This facilitates the production of the Annual Freedom of Information Act Report to Congress which is developed by this office.

When a request is received in the field, the Chief FOIA Officer should be contacted at, (571) 448-3153. The sequential control number (e.g. I-22-001-H) should be entered in the upper right hand corner of the original request. Normally this information should be entered on the label of the case file as follows:

FOIA Request I-22-001-H

A copy of the original request should be forwarded to DL using pouch mail once it is placed under control. DCAA Form 5410-4, Freedom of Information Case Summary, which summarizes FOIA activity, and a copy of the initial determination, is also forwarded to DL (FOIA) upon completion of processing. This form is used as a feeder document to the annual report.

The sequential numbering system used to control FOIA cases is designated by various alpha and numeric codes and is divided into four parts separated by hyphens.

The first part identifies the type of request:

**I** for initial requests (signed by Chief FOIA Officer);

**A** for Appeals (processed only by the Office of General Counsel and signed by the General Counsel).

The second part represents the year the request was received for processing by the Agency (e.g., 22 for 2022).

The third part identifies the sequential number (e.g., 298).

### **How are FOIA Requests Evaluated?**

The request is reviewed by the Chief FOIA Officer to determine a number of factors:

Is the request for records, or for information that would have to be specially developed? If it is a request for information that must be developed, the Chief FOIA Officer will notify the requester that there is no record. The letter may be forwarded then to the appropriate DCAA office for response.

Is the request for records which DCAA might reasonably be expected to have, or does the request deal with a subject that is primarily within the jurisdiction of another Federal agency?

Is the request understandable and reasonable in scope? If it is not clear what the requester wants, or if the request is excessively broad in scope, the Chief FOIA Officer may call the requester to obtain specifics or to limit the scope of the request. Frequently, requesters will have only a vague idea of what they want or the type of records available in DCAA files. In those cases it is normally helpful to set up a conference call between the requester, the Chief FOIA Officer, and the action office to discuss DCAA's files and procedures, and to seek ways to clarify the scope of the request.

Does the request deal with specific records that have been requested before or that can be readily retrieved by the action office? If the records have been requested before, and are readily available, such as with requests to Headquarters for Memorandums for Regional Directors (MRDs), the Chief FOIA Officer will respond to the requests directly. At present, approximately one quarter of DCAA's FOIA requests are handled in this way.

If the Chief FOIA Officer cannot respond to a request immediately, copies of the request will be forwarded by memorandum to the office which might reasonably be expected to have the records requested. The memorandum will request a response within ten working days. The memorandum will also advise offices that the Chief FOIA Officer should be kept informed of any problems or delays incurred in processing the request.

## **What is the Role of the Action Office?**

When the Chief FOIA Officer forwards a FOIA request to an action office, it should be distributed immediately to the divisions, branches, sections, or persons who have or may have the records that the requester is seeking, or who may be knowledgeable about the subject matter of the request. Offices that hold daily meetings with senior staff find the meetings an excellent opportunity to discuss any new FOIA requests, since those attending are most knowledgeable about who participated in various activities. It is also the action office's responsibility to assure that any retired records which may be subject to the request are also reviewed.

If the Chief FOIA Officer neglects to forward a FOIA request to an office that may have records subject to the request, the action office should notify the Chief FOIA Officer immediately. If known, the name of a staff member in another office who may have records or information concerning the request should be sent to the Chief FOIA Officer. Because of the changes in personnel, action offices in other offices may not be aware of the staff's previous work assignments.

Action offices should telephone the Chief FOIA Officer as soon as possible, if the request is ambiguous; or if the technical staff involved in the search believes the scope should be clarified or narrowed. As noted previously, the Chief FOIA Officer can arrange a conference call with the requester to clarify the request so that it may be possible to save time that will otherwise be wasted in unnecessary searching. In the case of a lengthy search or one involving a voluminous number of records, the requester may have to agree beforehand to pay fees for searching, reviewing for release, and for copying records.

The action office should set a deadline--normally three to five working days--for their staff to make their submissions. This deadline should allow time to obtain necessary concurrences, so that a punctual submission to the Chief FOIA Officer is made. If the deadline cannot be met, the action office should notify the Chief FOIA Officer as soon as possible.

If the action office knows that it has not originated records subject to the request, and has received no records from sources outside DCAA, it need not search for records. However, if they have the name of a specific individual to contact, the action office must forward that information to the Chief FOIA Officer.

The names of the action office's staff members who originate or receive records must be provided to the Chief FOIA Officer. When the staff has submitted the results of its search, the action office should prepare a memorandum to the Chief FOIA Officer listing all the records by categories and in chronological order, oldest record on top, as follows:

- records to be released;
- records withheld in part;
- records withheld in full; and
- records from other sources (other DCAA offices or other agencies to whom the Chief FOIA Officer should refer the records for review and disclosure determinations).

In reviewing the records submitted by the action office, the Chief FOIA Officer should look for obvious omissions and question the action office as to the whereabouts of any missing records. For example, if a memorandum refers to an incoming letter or memorandum, has that record been produced? Are listed enclosures included?

A copy of each record listed should be enclosed, or an explanation should be provided as to why it is not enclosed. When the record is not enclosed, it must be specifically identified by date, subject, and author. (Although one office is not required to search for records originated by another office, if such records are found, they should be identified to the Chief FOIA Officer in order to assure that no records are overlooked.)

The Chief FOIA Officer should ensure that all records or portions of records withheld are clearly marked, and that the reason they are withheld is noted in the memorandum and appendices (i.e., the list of documents). Recommended withholdings by different members of the staff must be consistent and in accordance with office policy. If recommended withholdings are suspected to be incorrect, they should be discussed immediately with the issuing office.

Action offices should obtain all required concurrences in their own office. The office Director, or Designated Senior Official, if the function has been delegated, is responsible for making the office recommendation as to what is released or withheld.

The office Director or the Designated Senior Official will look to the Chief FOIA Officer as the FOIA expert, and will seek his or her advice. The action office's job is to identify correctly all responsive records while the Chief FOIA Officer is required to protect the Agency from releasing information that should be withheld and denying information that should be released.

## **What are the Roles of the Technical and Administrative Staffs?**

If there are any questions concerning the scope of a request, the action office should arrange to clarify it with the Chief FOIA Officer. Once any questions concerning the scope of the request are resolved, the search for records should proceed immediately.

The Chief FOIA Officer will specify the date by which the search and review must be completed. If it is impossible to meet the deadline because of significant work conflicts or for other valid reasons, the Chief FOIA Officer should be notified immediately. An estimate of the date by which the search is expected to be completed should be made and, if necessary, scheduling priorities should be resolved with higher level management.

All Agency records that are subject to the request must be identified. Under the FOIA, the Agency does not have the discretion to decide whether or not a record is significant or insignificant, important or trivial. If it is an Agency record and it falls within the scope of the request, it must be submitted and dealt with in the response letter.

The test of the legal adequacy of a FOIA record search is one that includes all records which a person, who is familiar with the subject matter of the request, can be expected to locate in a reasonable amount of time. A good faith effort is required to meet this test. This means that:

All persons knowledgeable about the subject of the request and likely to have records are contacted.

The search for records includes all files (to include computer) that are likely to have records responsive to the request.

The adequacy of an Agency's search is measured by the standard of reasonableness, and is dependent upon the circumstances of the case.

Normally, the action office need only look for records prepared up to the date of the request. (The FOIA does not require that a request be open-ended for records yet to be created or those of a continuing nature). However, if there is an extended delay in responding to the request, the Chief FOIA Officer should be informed so that he or she can assign a new due date.

If personal notes are intermingled with Agency records, there is a presumption that they are Agency records and are subject to the request.

If the request is only for a specified report, other information such as drafts, background material, or other records, need not be furnished, even though the requester may find them useful.

A record does not have to comply in every detail with a request to satisfy the request. For example, if a requester asks for certain information in alphabetical order, and the staff

organizes it in some other sequence, it is not necessary to alphabetize it. Similarly, the Agency does not have to produce a computer printout in the exact format specified by the requester if a new program has to be written to put it in that format. The staff need only furnish those existing records which pertain to the subject of the request.

The issue of whether records are actually created or merely extracted, with respect to electronic records, from an existing database is not always readily apparent. Consequently, when responding to FOIA requests for electronic data where creation of a record, programming, or particular format is questionable, activities should apply a standard of reasonableness. In other words, if the capability exists to respond to the request, and the effort would be "a business as usual" approach, then the request should be processed.

A record may not be destroyed once a FOIA request is received, even though it could be destroyed under the terms of the Federal Records Act and the DCAA Files Maintenance and Disposition Manual (DCAAM 5015.1). Once a FOIA request covering that record has been received, it must be released unless it can be exempted under one of the FOIA exemptions.

#### Special categories of records:

Records originated by another DCAA office - These should be identified in a listing separate from records originated by the action office, and copies forwarded to the Chief FOIA Officer. The action office need not search for records from other offices. Thus, the action office, knowing it would otherwise have a negative reply to the request, may ignore searching for the records received from other DCAA offices. The Chief FOIA Officer should be informed, however, and provided the name of the individual or branch in another office who should be contacted, if known.

Records received from other agencies - Normally, these are referred back to those agencies for direct response to the requester. The requester shall be advised in writing by the Chief FOIA Officer of such a referral. If such information is contained in a DCAA record, the Chief FOIA Officer will consult the other agency as to its availability. DCAA will then respond to the request for both agencies or refer the document to the originating agency.

Draft records - Drafts still in DCAA's possession are subject to the FOIA. They must be included in a submission to the Chief FOIA Officer even though they have been superseded by subsequent drafts or final records.

When all the records subject to the request have been assembled, the action office staff should review them to identify all sensitive records and to recommend what records or portions thereof should be withheld.

The information to be withheld under one of the FOIA exemptions must be segregated from those parts of a record which can be released. Therefore, those portions to be withheld from public disclosure should be bracketed in red (preferably with a red pencil that can be whited

out if necessary). The complete record, exempt and nonexempt, must be furnished to the Chief FOIA Officer for review and concurrence when information is to be withheld.

### **What are the Roles of the Headquarters Assistant Directors, Regional Directors, and Corporate Audit Directors?**

Each DCAA office subject to a FOIA request (e.g., FAO or Division within a Headquarters Assistant Directorship, Regional Headquarters or Corporate Audit Directors) is responsible for recommending whether to disclose or withhold, in whole or in part, each Agency record identified in that office.

Each Headquarters Assistant Director, Regional Director, or Corporate Audit Director is responsible for ensuring that the office meets its obligations under the FOIA.

FOIA exemptions are, for the most part, discretionary; meaning that if there is no harm to the Government or any member of the public, then the record should be released. For example, a predecisional record need not be withheld merely because it might be exempt under Exemption 5. Records must be reviewed for withholding on a line-by-line basis. Entire pages or paragraphs cannot be withheld if only a few words are legally withholdable.

Care must be taken to exercise discretionary release of otherwise exempt records. However, Exemptions 1 and 3 have no discretionary latitude. Likewise, Exemptions 4, 6, and 7(c) may lose their discretionary latitude after the results of a predisclosure notification or the conduct of balancing tests (balancing the public's right to disclosure against the individual's right to privacy) are determined.

Care also should be taken to delete personal privacy information, such as birth dates, home addresses, phone numbers, and social security numbers.

The responsibility for identifying sensitive records and information belongs to the office in which the records originated or which is principally responsible for the records. Because of the volume of records involved, the Chief FOIA Officer's review is limited to determining if information proposed to be withheld is consistent with Agency regulation and policy. Therefore, it is very important that action offices conduct a general review of documents responsive to FOIA requests to ensure that all sensitive information is identified. If information is inadvertently released, it normally cannot be recalled.

### **Who Coordinates DCAA's Response to a FOIA Request?**

After a response has been received from each of the offices to which a FOIA request was sent, the Chief FOIA Officer will prepare a coordinated Agency response to the request. If the request involves a significant number of records, or if the responses from some offices are delayed, the Chief FOIA Officer will prepare a partial response, or a series of partial responses, depending upon the situation. Each record released or denied is identified on an appendix to the response. (In cases involving an on-going investigation, records are identified as a group rather

than specifically identified in order not to disclose the focus of the investigation or allow those being investigated to hide or destroy potential evidence).

If records are denied, the applicable FOIA exemption(s) for the denial are specified. The response also names the denying official who is the head of the particular office involved (e.g., Regional Director). The letter also informs the requester that any denial may be appealed within 60 calendar days to the General Counsel, DCAA. Any records denied by DCAA must, under DCAA's Files Maintenance and Disposition Manual (DCAAM 5015.1), be retained for a period of six years after denial of the initial request or, if there was an appeal, six years after denial of the appeal (See DCAAM 5015.1, series 502.5 and 502.6).

### **Should Contractor Names be Exempt from "FOIA Material" Considered Releasable?**

Contractor names are considered exempt information per Exemption 6.

### **When Part of the Record to be Released Originates Outside of DCAA, Should the Requester be Routinely Advised to Contact the Originator to Obtain that Portion of the Record?**

The requester should not be "referred" to another agency for material which is considered part of a DCAA record (e.g., enclosure to an MRD) and the information is clearly releasable. If a release determination cannot be established during review by the action office, the record may be referred to the originator for processing, after coordination with the originator.

Essentially, when DCAA locates records responsive to a request which were generated by another Federal agency, the standard procedure has been to "automatically" refer either the record or the requester to the originating agency for processing. The FOIA, however, not only gives agencies the authority to make a release determination on any record in the possession and control of the Agency, but compels them to do so. In this light, DCAA offices should consider externally generated records. (Note: Control of the record means that the materials came into DCAA's possession in the legitimate conduct of its official duties).

### **What is the Procedure for Handling Audit Reports Subject to the FOIA?**

The purpose of this section is to standardize Agency processing procedures for handling audit reports, solicited under the Freedom of Information Act, whose release is dependent upon the consent of the receiving DoD contracting officer to whom the report was furnished.

The compelling reason for formalizing procedures for processing requests of this type is the literal dependency the disposition of the audit report has on the related working papers maintained by the Agency. Further, given that no DCAA decision on the working papers may be consummated until the releasability of the audit report is formally determined, the management of the affected referral is often significantly impaired as to delay processing for an indefinite period of time. Therefore, since the Act mandates that requests submitted under the FOIA be processed in a timely fashion, it is necessary that we take a proactive position in dealing with the respective contracting officers.

The intent of the following practice or technique is to ensure that this Agency is in full control of the request during the life cycle of the FOIA request. It further provides methods that facilitate the "consultative process" with the contracting officer by offering specific criteria which delineate responsibilities and identify DCAA actions related to the case.

The typical scenario described is one that finds the requester seeking both the audit report and working papers where the releasability of the audit report is not yet known. In accordance with the provisions of section C1.5.9.3, DoD 5400.7-R, DoD Freedom of Information Act Program, it has been determined that "the advisory report (audit report) should be referred to the appropriate DoD contracting officer."

The specific efforts necessary to process the FOIA are as follows:

Refer the Audit Report and FOIA request to the contracting officer's Chief FOIA Officer. It is important to note that any other destination may remove the request from FOIA channels and be perceived as a routine administrative action by those not versed in the FOIA.

### **How are Requests for Audit Reports without Working Papers Processed?**

This section provides procedural guidance on the processing of requests submitted to the Agency for copies of audit reports without concurrent demand for related working papers. The prime motive in formulating standard processing procedures is to ensure that Agency resources are not spent in the production of records when cognizant release authority rests with another component.

Qualifying requests are those that seek "e.g., all audit reports from 2018 to present related to XYZ company" and/or specifically identify the audit report(s) by number that are perceived to be on file with the Agency.

In cases where only the company name is known, Chief FOIA Officers should refer to the Contractor Alpha Listing for the identification of the "R/ORG" code of the DCAA office responsible for that contractor. The first four digits of the audit report number also identifies the "R/ORG" code.

The Chief FOIA Officer should then refer the request directly to the Contracting Officer's Chief FOIA Officer and inform the requester accordingly. Requesters should be provided with a brief explanation of DCAA's role in the audit report and its intended purpose. They should also be advised that section 1-508d of DoD 5400.7-R, DoD Freedom of Information Act Program (32 CFR 286.7(i)(4)) requires that these advisory reports (audit reports) be referred to the appropriate contracting office for release determination.

Requests for audit reports generated for non-DoD agencies should be treated as requests for DCAA records since the DoD FOIA regulation does not address them. Moreover, the theory underlying referral to another component, i.e., DoD is one agency and can determine which of its

activities will respond to a FOIA request, is not applicable to this case. However, this does not preclude the coordination of such actions with the non-DoD agency.

### **How are Requests for Audit Reports and Working Papers Processed that are Predecisional and Deliberative?**

This provides procedural guidance concerning the processing of requests for audit reports and their related working papers where the contracting officer has determined the report to be "predecisional and deliberative" and thereby subject to the deliberative process privilege of Exemption 5 of the Freedom of Information Act.

### **Should We Verify Representation Claimed by Law Firms on Behalf of Their Clients Seeking Copies of Records Under the Freedom of Information Act?**

It has become common practice for law firms representing DoD contractors to file FOIA requests on behalf of their clients. These requests usually contain either a statement indicating that fact or a signed notice from their client authorizing the release of their records directly to the requesting law firm. This condition often raises questions pertaining to the authenticity of such claims from Agency personnel tasked to respond to these FOIA requests. These concerns surface as a result of our Agency's innate interest in protecting the commercial and financial position of DoD contractors subject to DCAA review.

As a matter of practice, verification of representation is not required and may be taken at face value. Severe penalties would be imposed on any attorney fraudulently seeking copies of confidential commercial or financial information on a DoD contractor. As a result, risk of wrongful disclosure is considered minimal.

This standard, however, does not necessarily apply to other requesters outside of the legal community. Each case must be reviewed on a case-by-case basis for application of the requirement to verify or validate the interests of the requester.

### **When the Agency Refers Documents to Another Agency, Does This Release DCAA from Further Obligation Pertaining to the Case?**

Technically, the Agency has a continuing obligation to the requester with regard to the referred documents. In fact, since DCAA has possession and control of the requested records, the responsibility to process the request remains with DCAA. However, the common practice and generally the accepted one, is to close out the case upon referral of documents to the originating or cognizant agency. The obvious benefit of this practice is the elimination of a series of processing tasks associated with coordinating determinations between several agencies and the inherent demand on internal resources. Further, this back and forth exercise is not normally very efficient for the requester as the process consumes much more time than a direct referral.

As a method of monitoring the activities related to the processing of documents provided to another agency as part of a referred case, the referral letter should include a request for a copy of the final response to the requester, citing our control number.

### **How Do We Assist a Requester Who is Seeking Extremely Broad Information?**

Occasionally FOIA requesters come to the Defense Contract Audit Agency for contract information based solely on our name. Most of these requests are very general and often state that they are looking for any information on XYZ Company. Obviously we can help to some degree, but when the request is general we can probably assist the requester more by advising them of the existence of the Federal Procurement Data Center (FPDC).

The FPDC carries all kinds of information on contracts let by the Federal government. The information is detailed and can be tailored to the requester's specific needs. This little known element of the General Services Administration can provide most of the information a requester is seeking. Based on the information obtained from the FPDC, the requester can more effectively draft requests which can easily be identified and processed without undue demand on DCAA's valuable resources.

The Federal Procurement Data Center may be contacted by calling (202) 401-1529 or by writing to the U.S. General Services Administration, Federal Procurement Data Center, 7th and D Streets, SW, Room 5652, Washington, DC 20407.

### **How Do We Handle Requests for Contractor Records?**

Contractor records are often the subject of Freedom of Information Act requests submitted to various levels within DCAA. Although the handling of such requests is usually fairly routine, the Chief FOIA Officer should consult with the Investigations Support Division (OIS) to determine if the named contractor is currently under investigation prior to processing. If OIS responds in the affirmative, the Chief FOIA Officer should refer the request to the investigative agency for processing. However, if OIS indicates that the contractor is unaware of the investigation and that contractor knowledge of the investigation would harm the investigative process, the Chief FOIA Officer will respond to the requester using a neither confirm or deny the existence of responsive records response.

This guidance does not apply to the referral of records pertaining to contractors from investigative agencies. In this instance, the investigative agency is simply returning Agency records to DCAA for release determination and direct response to the requester. The investigative position of these records is no longer an issue.

## **CHAPTER 4 - HOW DO AGENCIES HANDLE APPEALS TO FOIA REQUESTS**

### **Highlights**

If DCAA initially denies a request for records, the requestor has the right to appeal that decision to DCAA and, if denied on appeal, to seek a judicial review of the denial in a Federal District Court.

When an appeal is received, the Agency must reconsider its decision to assure that the records denied are still legally withholdable and should continue to be withheld. At this time, new exemptions may be cited or previous ones disregarded.

Normally, DCAA must respond to a FOIA appeal within 20 working days.

### **How Long Do Requesters Have to Appeal a Denial?**

A requester has the right to appeal the denial of records, or the denial of a request for waiver of fees, within 60 calendar days of receiving DCAA's denial. All appeals are forwarded to the General Counsel, DCAA, as the central DCAA control point, where they are assigned a sequential number for processing.

### **Can a Requestor Appeal a Delay in the Initial Request?**

A requester may appeal DCAA's lack of a timely response to an initial request. In that case, the initial request and the appeal are processed concurrently. If any records are denied, the requester is given new appeal rights.

### **How are Appeals Processed?**

The following procedures apply to the processing of appeals when DCAA denies records in response to an initial FOIA request.

The appeal is sent to the Office of General Counsel where the Chief FOIA Officer date marks the appeal letter and assigns it a sequential appeal number (e.g., A-22-001-H, the first position letter "A", designating appeal, in place of the original symbol "I" which represents initial requests).

The Chief FOIA Officer will review the records denied and consider any new information presented in the appeal, and make a recommendation as to whether the records, in whole or part, should continue to be withheld from public disclosure. This reviewing official will consider arguments presented in the appeal letter, changes in circumstances because of the passage of time, and whether releasable information is scrupulously segregated from information that is not releasable.

The Chief FOIA Officer will submit determinations along with a copy of the records to the General Counsel, who will review the recommendation to assure its adequacy and identify any issues they should address.

The General Counsel will review the information denied if applicable to assure that the denial is legally correct. If the appeal is denied, the response will include specific information regarding the basis for the denial and will advise the requester of his/her right to seek judicial review under 5 U.S.C. § 552(a)(4)(B) and 32 CFR 290.7.

### **How Long Does DCAA Have to Respond to an Appeal?**

All issues on appeals should be resolved by the 15th working day after the appeal is received unless it is necessary to consult with another agency or to obtain a company's review of proprietary information. Thereafter, the appellate authority will prepare DCAA's approval or denial of the appeal for the signature of the General Counsel. If the request is denied, the requester will be informed that a judicial review of the denial is available in the Federal district court in which the requester resides, has his or her principal place of business, where the agency records are located, or in the District of Columbia.

Unless there are extenuating circumstances, DCAA's response should be signed and mailed by the 20th working day after the appeal was received.

Under DCAA's records disposal schedule, FOIA appeals and records denied under any appeals are to be maintained by the Agency for six years from the date of the response.

### **Can a Requester Appeal a "No Record" Determination or Fee Waiver Denial?**

The requester must be given the opportunity to challenge the adequacy of the Agency's search under the appellate process. All "no record" responses shall provide an adequate statement offering appeal rights in accordance with established administrative appeal procedures. An example of a suitable response is as follows:

**After a thorough search of Agency records, we have determined that we have no records responsive to your request. Should you disagree with the finding cited above, you may appeal in writing within 60 calendar days from the date of this letter to the DCAA General Counsel, 8725 John J. Kingman Road, Fort Belvoir, Virginia 22060-6219.**

In the event of a denial of a fee waiver request, the requester must be advised of appeal rights available as outlined above.

## **CHAPTER 5 - CAN REQUESTERS APPEAL AGENCY DENIALS IN THE COURTS?**

### **Highlights**

An individual may sue an agency under the FOIA in a U.S. District Court if the agency:  
withholds requested records or portions thereof, denies a request for waiver of fees, or fails to respond within the statutory time limits.

FOIA litigation is handled by the Office of General Counsel (DL), working with the Department of Justice.

In defending against FOIA suits, Agency staff involved in searching for and reviewing documents may be requested to prepare, under oath, detailed affidavits regarding their actions in processing a request or why they believe specific documents are exempt from public disclosure.

Agency staff may also be subject to written interrogatories or oral depositions, which may subsequently be used during the course of legal proceedings.

A Vaughn Index, which is an itemized description of each document withheld, the applicable FOIA exemption, and the basis for asserting the exemption, must normally be prepared by the staff in each FOIA case.

Courts may examine agency documents in camera, meaning in private, to verify agency claims that the records are being validly withheld.

If the plaintiff (requester) "substantially prevails" in a FOIA suit against the Agency, the U.S. Government may be required to pay reasonable attorney fees and costs for the plaintiff.

A court has the authority under the FOIA to refer matters for disciplinary action to the Special Counsel of the Merit Systems Protection Board if it finds that "Agency personnel acted arbitrarily or capriciously with respect to the withholding."

### **When May a Requester Sue an Agency?**

The FOIA, 5 U.S.C. § 552 provides that if a FOIA request is denied on appeal, the requester may seek review in a U.S. District Court in which the requester resides, or has his principal place of business, or the records are situated, or in the District of Columbia.

Normally, before going to court, persons must exhaust their administrative remedies; that is, there must be a final decision denying the documents by the Agency. However, the FOIA provides that if the Agency does not respond to a FOIA request within the statutory time limits (normally 20 working days for an initial request and 20 working days for an appeal), the requester may treat such delay as a denial of the request and may immediately file suit in a district court. In practice, persons who file FOIA requests with DCAA seldom go directly to

court even if the Agency is tardy in responding to the request. There are reasons for this. First, DCAA keeps the requester informed periodically regarding the status of the request. Second, it is unlikely that anything would be gained by filing suit early. In *Open America v. Watergate Special Prosecution Force*, the court held that an agency is deemed to be in compliance with the FOIA if it is exercising good faith and "due diligence" by processing requests in the order in which they are received, absent a demonstration of "exceptional need or urgency" by the requester. Under this commonly accepted approach, the courts get involved immediately only in cases in which an agency is not exercising "due diligence" with respect to an individual request, or is "lax overall in meeting its obligations under the Act with all available resources," or when the requester can show a genuine need for having the request processed out of turn.

### **How Does a FOIA Suit Begin?**

A FOIA suit against an agency begins with the filing of a Summons and Complaint, usually by the requester's attorney, in a U.S. District Court. It sets forth the parties involved, the nature of the action, the basis for the court's jurisdiction, the factual basis of the suit, including the records requested, correspondence between the parties, and the records denied by the agency. It also alleges that such withholding by the agency is contrary to law and requests that the court order the agency to make the records immediately available. Frequently, the complaint will also request that the court award the plaintiff reasonable attorney's fees against the Government.

After receiving a copy of the Summons and Complaint, the agency has 30 days to respond. The response sets forth in broad terms the agency's reaction to the complaint, and attempts to narrow those items at issue in the suit.

DCAA's responsibility for action on a FOIA suit is handled by an attorney in the Office of General Counsel. The attorney forwards copies of the summons and complaint to the Chief FOIA Officer, obtains a copy of the file on the processing of the request, including copies of any withheld documents, and consults with the staff of those offices responsible for the documents withheld in preparing an answer to the complaint. The answer to the complaint is signed by an attorney in the Department of Justice, which acts as the Government's lawyers.

### **What is a Vaughn Index?**

The FOIA establishes a presumption that all agency records should be made available to the public, and the burden is upon the agency to overcome this presumption and sustain its decision to withhold records. To meet this burden of proof for information withheld, agencies must prepare a Vaughn Index, which is an itemized list describing each document or portion of a document withheld, and asserting the basis for the exception. The Vaughn Index is based on a case in the D.C. Circuit of the same name. The preparation of Vaughn Indexes and supporting affidavits are difficult, time consuming, and require the close collaboration of the technical staff most familiar with the records and the attorneys handling the case. Where large numbers of records are involved, it may be possible to prepare a Vaughn Index on only a representative sample of records rather than all records withheld. In any case, this process requires that every record withheld be reviewed to assure that it is legally withholdable and it is in the public interest to continue to withhold the document.

### **Is the Agency Required to Produce a Vaughn Index at the Administrative Level?**

The Vaughn Index was fashioned only in connection with the adjudication of a defendant agency's motion for summary judgment in litigation and does not apply to the administrative process. There is no requirement that administrative responses to FOIA requests contain the same documents necessary in litigation. In fact, no court has held that a requester may compel production of such an index at the administrative level.

By definition, the decision in *Vaughn v. Rosen* requires agencies to prepare an itemized index, correlating each withheld document (or portion) with a specific FOIA exemption and the relevant part of the agency's nondisclosure justification. The primary purpose of the index is to allow a clear explanation of why each document or portion of a document withheld is claimed to be exempt from disclosure.

The statutory language of the FOIA requires only that an agency inform the requester of the reasons for the denial of an initial request, of the name and title of each person responsible for the denial, and the right to administrative appeal. See 5 U.S.C. § 552(a)(6)(i), (6)(C).

### **Will the Courts Allow Discovery?**

Discovery, available in U.S. District Courts under the Federal Rules of Civil Procedures, is only allowed with the permission of the court, and may be either oral or written. Essentially, it is a process by which one party to a proceeding uncovers information known exclusively to or in the possession of the other party to the proceeding, and which the party requesting discovery believes are necessary in order to obtain a fair resolution of the case.

Normally in FOIA cases, the court relies on the Vaughn Index and affidavits submitted by the parties, and will not permit discovery. An agency is required by affidavits to show how the FOIA request was processed; it must identify its records management policies, procedures, and practices as it relates to the requested records and the possible locations of such records. It must identify specifically what offices and staffs were contacted, and what files were searched for records subject to the request. The agency officials responsible for the search must also certify that to the best of their knowledge all records subject to the request were identified.

If legitimate questions are raised concerning the thoroughness of the search, the court can permit interrogatories or depositions of the staff. Depositions are taken under oath and in the presence of a court reporter. Opposing counsel may try to elicit information which would not otherwise be available under the FOIA. Statements made during FOIA discovery are admissible in these proceedings and may be used to challenge or discredit the testimony of DCAA staff witnesses.

## **Will the Courts Examine Agency Records in Detail?**

The FOIA provides that a court "may examine the contents of ... agency records in camera to determine whether such records or any part thereof shall be withheld ..." In camera, meaning in private, refers to the review by a judge of records in the judge's chambers. Opposing counsel and the public are not permitted to see in camera filings.

In camera inspection is discretionary with the court, and generally is the exception rather than the rule since courts do not have the time to conduct detailed reviews of voluminous documents. It may, however, be used to test the agency's claims of exceptions where the Vaughn Index is too vague or the agency's claims of withholding are too sweeping.

In cases involving classified information, national security interests, or law enforcement investigations; where it is not possible for the court to make a decision based upon the information presented in the public record; the court may also allow the Government to file an ex parte in camera affidavit which is not made available to opposing counsel. This process is extremely rare, and is allowed only when the Government can demonstrate that the interests of the adversary process are outweighed by other crucial national security or law enforcement interests.

## **How Does a Court Make its Decision?**

In virtually all FOIA cases, the court makes its decision based upon the written records (pleadings, depositions, interrogatories, and affidavits) filed in the case. The method normally used for doing this is review by the judge of these written records submitted by the agency. The average FOIA case in the D.C. Circuit Court takes between one and one-half to two years from start to finish.

## **Can a Court Decision be Appealed?**

The losing party in the District Court may appeal to the Court of Appeals (or appellate court). In reviewing FOIA decisions, the appellate court determines, as a matter of law, whether the District Court had an adequate factual basis for its determination, and assuming an adequate factual basis, whether the court's determination was clearly erroneous. If there was not an adequate factual basis, the appellate court normally remands the case back to the District Court with instructions to make additional findings.

Exemptions which were not raised by the Government in the District Court are normally considered waived and cannot be raised for the first time in the appellate court. If the Government loses in the District Court, it can obtain a stay of the court's order to disclose records since disclosure of the records at that time would in essence comply with the request and make the case unnecessary.

## **Can an Appeal be Made to the Supreme Court?**

The losing party at the appellate level may appeal to the Supreme Court of the United States. Unlike the appellate court, the Supreme Court does not have to take the case, and will do so only if the case presents an important Constitutional issue or if there is a split in decisions among the various Circuit Courts of Appeals. If the Supreme Court does not take the case, the decision of the Court of Appeals stands as the final decision on the matter.

## **How do the Courts Award Attorney Fees?**

Under the FOIA, a court may assess against the Government "reasonable attorney fees and other litigation costs reasonably incurred in a case...in which the complainant has substantially prevailed" at both the District Court and appellate court level. In *Cuneo v. Rumsfeld*, the court said:

"Congress realized that too often the insurmountable barriers presented by court costs and attorney fees to the average person requesting information under the FOIA enabled the Government to escape compliance with the law."

In order to "substantially prevail" and receive attorney fees and costs, the plaintiff must show that initiating and prosecuting the litigation was in process. It is not enough to show the mere fact that documents were released after the filing of the suit.

Assuming the plaintiff has substantially prevailed, the court still has discretion to decide whether fees should be awarded and, if so, the amount of the award. In making its determination, the court is generally guided by four criteria:

- (1) the public benefit derived from the case,
- (2) the commercial benefit to the complainant,
- (3) the nature of the complainant's interest in the records sought, and
- (4) whether the Government's withholding had a reasonable basis in law.

If a court decides to award attorney fees, the amount of the award is dependent upon the number of hours reasonably expended on this type of case multiplied by the attorney's reasonable hourly rate. Fees for paralegals working on the case are also covered. However, work done by an attorney at the administrative stage (making the initial FOIA request and handling any appeal within the agency) is not covered. In addition, attorney fees for an individual suing on his or her own behalf are not normally recoverable, except in the D.C. Circuit Court. Litigation costs (the cost of filing, depositions, reproduction, mailing, etc.) are recoverable in either case. Also, although the FOIA provides that courts may only award costs "against the United States," at least one court (the D.C. Circuit) has used Rule 39(a) of the Federal Rules of Appellate Procedures to award costs to the Government when it was successful in defending a FOIA appeal.

As a case in point, the adequacy of search conducted by the Agency in response to a FOIA request can be challenged. If the Agency claims that no further records exist, and, for example, additional documents are located during the discovery process, the Courts will be highly likely to rule in favor of the requester and allow attorney's fees and litigation costs. As such, searches for responsive records must be processed with due diligence and thoroughness to ensure that all records sought by the requester are identified.

Attorney fees and litigation costs in FOIA cases can be substantial and are paid by the Agency out of appropriated funds.

### **Can the Courts Discipline an Agency Employee?**

Section 552(a)(4)(F) of the FOIA provides that "whenever the court orders the production of any agency records improperly withheld from the complainant and assesses against the United States reasonable attorney's fees and other litigation costs, and the court additionally issues a written finding that the circumstances surrounding the withholding raise questions with respect to the withholdings, the Special Counsel shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the officer or employee who was primarily responsible for the withholding ..."

The sanctions provision of the FOIA was made as part of the 1974 amendment to the Act. In 1976, a D.C. Court in *Holly v. Acree* made a finding that agency officials may have acted arbitrarily or capriciously. However, after its investigation, the Civil Service Commission, which at the time was responsible for investigating court referrals, declined to take any disciplinary action. There have been no reported cases since.

## **CHAPTER 6 - WHAT RECORDS ARE EXEMPT FROM FOIA DISCLOSURE?**

### **Highlights**

The FOIA requires that any reasonably segregable portion of a record be made available upon request after deletion of the exempt portions of the record.

Except for drafts and certain legal records, all records must be reviewed on a line-by-line basis to segregate exempt from non-exempt information records.

If, after deletion of the exempt information, the remainder is essentially unintelligible, in most cases, the entire record may be withheld from disclosure to the requester.

Commercial use requesters may be charged for the staff time spent reviewing records for exempt information and for making the actual deletions. No other requesters can be charged for such activities for reviewing records for releasability.

Section 552(b) of the FOIA requires that:

Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection meaning the nine exemptions of the FOIA.

### **How is Exempt Segregated from Nonexempt Information?**

This chapter discusses each of the nine exemptions to the FOIA, its applicability to DCAA, and the Agency's duty to segregate exempt information from nonexempt information. The nine exemptions to the FOIA which permit an agency to withhold records are listed below.

1. Classified Information
2. Internal Rules and Practices
3. Information Exempted by Statute
4. Proprietary Information
5. Predecisional Information
6. Personal Privacy Information
7. Law Enforcement Records
8. Records of Financial Institutions
9. Oil and Gas Well Data

### **What Have the Courts Said about Segregating Information?**

In applying the segregation requirement of determining what is "reasonably segregable," courts in the past have evaluated a combination of what is intelligible and the extent of the burden upon an agency in segregating material. Courts also have the discretion to review the records in camera to determine if the extent of an agency's deletions is reasonable. If the exempt

and nonexempt portions of a record, particularly a predecisional record, are so "inextricably intertwined," that release of segregable portions would reveal the deliberative process itself, then the entire record may be withheld.

### **What is the Best Technique for Reviewing Records?**

To the extent possible, a records reviewer should go through all the records at one sitting rather than spreading the review out over several days. If it is not possible to review everything at one time, the reviewer should at least scan all the records at one time after completing the review to assure that the information deleted is consistent.

Records must be reviewed on a line-by-line basis. Entire pages or paragraphs cannot be withheld if only a sentence or a few words are exempt.

Material to be deleted should be bracketed in red pencil and the applicable FOIA exemption should be noted in the margin. A red pen, or any pen for that matter, should not be used to mark material to be deleted since ink cannot be readily whited out or erased if changes are made.

After the staff reviewer has completed marking the records, the Designated Senior Official for the office reviews all withheld records and material to be deleted on substantive grounds.

Offices must forward copies of all records proposed for withholding, in whole or in part, to the Chief FOIA Officer. A memorandum accompanying the records should state the rationale for withholding, and contain separate appendices listings, in date order, all records withheld in whole or in part and identifying the exemptions involved for the denials.

The Chief FOIA Officer will review the records, or portions thereof, recommended for withholding with respect to compliance with past practice and procedures, applicability of the claimed exemption to the records, and the internal consistency of the information deleted within the records.

Because of staff constraints, the Chief FOIA Officer does not review records proposed for release. Consequently, each office must ensure that a record to be released contains no information that should be withheld, such as classified, proprietary, or personal information, or information that is contained in another record which is being withheld.

### **When is a Discretionary Release Appropriate?**

It is DCAA policy to make records publicly available, unless they qualify for exemption under one or more of the nine exemptions. DCAA organizational elements may elect to make a discretionary release, however, a discretionary release is generally not appropriate for records under exemptions 1, 3, 4, 6 and 7(c). Exemptions 4, 6, and 7(c) cannot be claimed when the requester is the submitter of the information.

A discretionary release to one requester may preclude the withholding of the same record under a FOIA exemption if the record is subsequently requested by someone else. In applying exemptions, the identity of the requester and the purpose for which the record is sought are irrelevant with the exception that an exemption may not be invoked where the particular interest to be protected is the requester's interest.

The following is an explanation of and the uses of the nine FOIA exemptions from DoD 5400.7-R, DoD Freedom of Information Act Program. These rules of usage should be followed by the Agency personnel when processing FOIA requests.

## *Exemption 1 - Classified Information*

Those properly and currently classified in the interest of national defense or foreign policy, as specifically authorized under the criteria established by Executive Order and implemented by regulations. Although material is not classified at the time of the FOIA request, a classification review may be undertaken to determine whether the information should be classified. If the information qualifies as Exemption 1 information, there is **no discretion** regarding its release. In addition, this exemption shall be invoked when the following situations are apparent:

The fact of the existence or nonexistence of a record would itself reveal classified information. In this situation, Components shall neither confirm nor deny the existence or nonexistence of the record being requested. A "refusal to confirm or deny" response must be used consistently, not only when a record exists, but also when a record does not exist. Otherwise, the pattern of using a "no record" response when a record does not exist, and a "refusal to confirm or deny" when a record does exist will itself disclose national security information.

Compilations of items of information that are individually unclassified may be classified if the compiled information reveals additional association or relationship that meets the standard for classification under an existing executive order for classification and is not otherwise revealed in the individual items of information.

## *Exemption 2 - Internal Rules and Practices*

Those related solely to the internal personnel rules and practices of the Department of Defense or any of its Components. This exemption is **entirely discretionary**. This exemption has two profiles, **high (b)(2) and low (b)(2)**. When only a minimum Government interest would be affected (administrative burden), there is a great potential for discretionary disclosure of the information. Consequently, DoD Components **shall not invoke** the low (b)(2) profile.

Records qualifying under high (b)(2) are those containing or constituting statutes, rules, regulations, orders, manuals, directives, instructions, and security classification guides, the release of which would allow circumvention of these records thereby substantially hindering the effective performance of a significant function of the Department of Defense. Examples include:

Those operating rules, guidelines, and manuals for DoD investigators, inspectors, auditors, or examiners that must remain privileged in order for the DoD Component to fulfill a legal requirement.

Personnel and other administrative matters, such as examination questions and answers used in training courses or in the determination of the qualifications of candidates for employment, entrance on duty, advancement, or promotion.

Computer software, the release of which would allow circumvention of a statute or DoD rules, Regulations, orders, Manuals, Directives, or Instructions. In this situation, the **use** of the software must be closely examined to ensure a circumvention possibility exists.

Records qualifying under the low (b)(2) profile are those that are trivial and housekeeping in nature for which there is no legitimate public interest or benefit to be gained by release, and it would constitute an administrative burden to process the request in order to disclose the records. Examples include rules of personnel's use of parking facilities or regulation of lunch hours, statements of policy as to sick leave, and administrative data such as file numbers, mail routing stamps, initials, data processing notations, brief references to previous communications, and other like administrative markings. **DoD Components shall not invoke the low (b)(2) profile.**

### *Exemption 3 - Information Exempted by Statute*

Those concerning matters that a statute specifically exempts from disclosure by terms that permit **no discretion** on the issue, or in accordance with criteria established by that statute for withholding or referring to particular types of matters to be withheld. The Directorate for Freedom of Information and Security Review maintains a list of (b)(3) statutes used within the Department of Defense, and provides updated lists of these statutes to DoD Components on a periodic basis.

### *Exemption 4 - Proprietary Information*

Those containing trade secrets or commercial or financial information that a DoD Component receives from a person or organization outside the Government with the understanding that the information or record will be retained on a privileged or confidential basis in accordance with the customary handling of such records. Records within the exemption must contain trade secrets, or commercial or financial records, the disclosure of which is likely to cause substantial harm to the competitive position of the source providing the information; impair the Government's ability to obtain necessary information in the future; or impair some other legitimate Government interest. Commercial or financial information submitted on a voluntary basis, absent any exercised authority prescribing criteria for submission is protected without any

requirement to show competitive harm. If the information qualifies as Exemption 4 information, there is **no discretion** in its release. Examples include:

Commercial or financial information received in confidence in connection with loans, bids, contracts, or proposals set forth in or incorporated by reference in a contract entered into between the DoD Component and the offeror that submitted the proposal, as well as other information received in confidence or privileged, such as trade secrets, inventions, discoveries, or other proprietary data.

Statistical data and commercial or financial information concerning contract performance, income, profits, losses, and expenditures, if offered and received in confidence from a contractor or potential contractor.

Personal statements given in the course of inspections, investigations, or audits, when such statements are received in confidence from the individual and retained in confidence because they reveal trade secrets or commercial or financial information normally considered confidential or privileged.

Financial data provided in confidence by private employers in connection with locality wage surveys that are used to fix and adjust pay schedules applicable to the prevailing wage rate of employees within the Department of Defense.

Scientific and manufacturing processes or developments concerning technical or scientific data or other information submitted with an application for a research grant, or with a report while research is in progress.

Technical or scientific data developed by a contractor or subcontractor exclusively at private expense, and technical or scientific data developed in part with Federal funds and in part at private expense, wherein the contractor or subcontractor has retained legitimate proprietary interests in such data in accordance with 10 U.S.C. 2320-2321 and DoD Federal Acquisition Regulation Supplement (DFARS), Chapter 2 of 48 C.F.R., Subpart 227.71-227.72

Computer software which is copyrighted under the Copyright Act of 1976 (17 U.S.C. 106), the disclosure of which would have an adverse impact on the potential market value of a copyrighted work.

Proprietary information submitted strictly on a **voluntary** basis, absent any exercised authority prescribing criteria for submission. Examples of exercised authorities prescribing criteria for submission are statutes, Executive Orders, regulations, invitations for bids, requests for proposals, and contracts. Submission of information under these authorities **is not voluntary**.

## *Exemption 5 - Predecisional Information*

Those containing information considered privileged in litigation, primarily under the deliberative process privilege. Internal advice, recommendations, and subjective evaluations, as contrasted with factual matters, that are reflected in deliberative records pertaining to the

decision-making process of an Agency, whether within or among Agencies (as defined in 5 U.S.C. 552(e) (reference (a))), or within or among DoD Components. In order to meet the test of this exemption, the record must be both deliberative in nature, as well as part of a decision-making process. Merely being an internal record is insufficient basis for withholding under this exemption. Also potentially exempted are records pertaining to the attorney-client privilege and the attorney work-product privilege. This exemption is **entirely discretionary**.

Examples of the **deliberative process** include:

The non-factual portions of staff papers, to include after-action reports, lessons learned, and situation reports containing staff evaluations, advice, opinions, or suggestions.

Advice, suggestions, or evaluations prepared on behalf of the Department of Defense by individual consultants or by boards, committees, councils, groups, panels, conferences, commissions, task forces, or other similar groups that are formed for the purpose of obtaining advice and recommendations.

Those non-factual portions of evaluations by DoD Component personnel of contractors and their products.

Information of a speculative, tentative, or evaluative nature or such matters as proposed plans to procure, lease or otherwise acquire and dispose of materials, real estate, facilities or functions, when such information would provide undue or unfair competitive advantage to private personal interests or would impede legitimate Government functions.

Trade secret or other confidential research development, or commercial information owned by the Government, where premature release is likely to affect the Government's negotiating position or other commercial interest.

Those portions of official reports of inspection, reports of the Inspector Generals, audits, investigations, or surveys pertaining to safety, security, or the internal management, administration, or operation of one or more DoD Components, when these records have traditionally been treated by the courts as privileged against disclosure in litigation.

Planning, programming, and budgetary information that is involved in the defense planning and resource allocation process.

If any such intra- or inter-agency record or reasonably segregable portion of such record hypothetically would be made available routinely through the discovery process in the course of litigation with the Agency, then it should not be withheld under the FOIA. If, however, the information hypothetically would not be released at all, or would only be released in a particular case during civil discovery where a party's particularized showing of need might override a privilege, then the record may be withheld. Discovery is the formal process by which litigants obtain information from each other for use in the litigation. Consult with legal counsel to determine whether Exemption 5 material would be routinely made available through the discovery process.

Intra- or inter-agency memoranda or letters that are factual, or those reasonably segregable portions that are factual, are routinely made available through discovery, and shall be made available to a requester, unless the factual material is otherwise exempt from release, inextricably intertwined with the exempt information, so fragmented as to be uninformative, or so redundant of information already available to the requester as to provide no new substantive information.

A direction or order from a superior to a subordinate, though contained in an internal communication, generally cannot be withheld from a requester if it constitutes policy guidance or a decision, as distinguished from a discussion of preliminary matters or a request for information or advice that would compromise the decision-making process.

An internal communication concerning a decision that subsequently has been made a matter of public record must be made available to a requester when the rationale for the decision is expressly adopted or incorporated by reference in the record containing the decision.

**Attorney-Client Privilege.** This privilege protects confidential communications between an attorney and a client (or multiple clients that share a common interest) relating to legal matters for which the client has sought professional advice. The information that the client supplies to the attorney, the advice that the attorney gives to the client in return, and communications between attorneys that reflect client-supplied information are protected by this privilege. Unlike the deliberative process privilege, with the attorney-client privilege all of the information can be withheld, including the facts.

**Attorney Work Product Privilege.** This privilege protects documents prepared by an attorney or at an attorney's direction in reasonable anticipation of litigation. Unlike the deliberative process privilege, with the attorney work product privilege all of the information can be withheld, including the facts. This privilege still can be used after the litigation is complete.

## *Exemption 6 - Personal Privacy Information*

Information in personnel and medical files, as well as similar personal information in other files, that, if disclosed to a requester, other than the person about whom the information is about, would result in a clearly unwarranted invasion of personal privacy. Release of information about an individual contained in a Privacy Act System of records that would constitute a clearly unwarranted invasion of privacy is prohibited, and could subject the releaser to civil and criminal penalties. If the information qualifies as Exemption 6 information, there is **no discretion** in its release.

Examples of other files containing personal information similar to that contained in personnel and medical files include:

Those compiled to evaluate or adjudicate the suitability of candidates for civilian employment or membership in the Armed Forces, and the eligibility of individuals (civilian,

military, or contractor employees) for security clearances, or for access to particularly sensitive classified information.

Files containing reports, records, and other material pertaining to personnel matters in which administrative action, including disciplinary action, may be taken.

Home addresses, *including private e-mail addresses*, are normally not releasable without the consent of the individuals concerned. This includes lists of home addressees and military quarters' addressees without the occupant's name. *Additionally, the names and duty addresses (postal and/or e-mail) of DoD military and civilian personnel who are assigned to units that are sensitive, routinely deployable, or stationed in foreign territories can constitute a clearly unwarranted invasion of personal privacy.*

Privacy Interest. A privacy interest may exist in personal information even though the information has been disclosed at some place and time. If personal information is not freely available from sources other than the Federal Government, a privacy interest exists in its nondisclosure. The fact that the Federal Government expended funds to prepare, index and maintain records on personal information, and the fact that a requester invokes FOIA to obtain these records indicates the information is not freely available.

Names and duty addresses (*postal and/or e-mail*) published in telephone directories, organizational charts, rosters and similar materials for personnel assigned to units that are sensitive, routinely deployable, or stationed in foreign territories are withholdable under this exemption.

This exemption shall not be used in an attempt to protect the privacy of a deceased person, but it may be used to protect the privacy of the deceased person's family if disclosure would rekindle grief, anguish, pain, embarrassment, or even disruption of peace of mind of surviving family members. In such situations, balance the surviving family members' privacy against the public's right to know to determine if disclosure is in the public interest. Additionally, the deceased's social security number should be withheld since it is used by the next of kin to receive benefits. Disclosures may be made to the immediate next of kin.

A clearly unwarranted invasion of the privacy of third parties identified in a personnel, medical or similar record constitutes a basis for deleting those reasonably segregable portions of that record. When withholding third party personal information from the subject of the record and the record is contained in a Privacy Act system of records, consult with legal counsel.

This exemption also applies 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. In this situation, DoD Components shall neither confirm nor deny the existence or nonexistence of the record being requested. This is a Glomar response, and Exemption 6 must be cited in the response. Additionally, in order to insure personal privacy is not violated during referrals, DoD Components shall coordinate with other DoD Components or Federal Agencies **before** referring a record that is exempt under the Glomar concept.

A "refusal to confirm or deny" response must be used consistently, not only when a record exists, but also when a record does not exist. Otherwise, the pattern of using a "no records" response when a record does not exist and a "refusal to confirm or deny" when a record does exist will itself disclose personally private information.

Refusal to confirm or deny should not be used when (a) the person whose personal privacy is in jeopardy has provided the requester a waiver of his or her privacy rights; (b) the person initiated or directly participated in an investigation that lead to the creation of an Agency record seeks access to that record; or (c) the person whose personal privacy is in jeopardy is deceased, the Agency is aware of that fact, and disclosure would not invade the privacy of the deceased's family.

## *Exemption 7 - Investigatory Records*

Records or information compiled for law enforcement purposes; i.e., civil, criminal, or military law, including the implementation of Executive Orders or regulations issued pursuant to law. This exemption may be invoked to prevent disclosure of documents not originally created for, but later gathered for law enforcement purposes. **With the exception of parts (C) and (F) of this exemption, this exemption is discretionary.** If information qualifies as exemption (7)(C) or (7)(F) information, there is **no discretion** in its release.

This exemption applies, however, only to the extent that production of such law enforcement records or information could result in the following:

Could reasonably be expected to interfere with enforcement proceedings (5 U.S.C. 552(b)(7)(A)).

Would deprive a person of the right to a fair trial or to an impartial adjudication (5 U.S.C. 552(b)(7)(B)).

Could reasonably be expected to constitute an unwarranted invasion of personal privacy of a living person, including surviving family members of an individual identified in such a record (5 U.S.C. 552(b)(7)(C)).

This exemption also applies 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. In this situation, Components shall neither confirm nor deny the existence or nonexistence of the record being requested. This is a Glomar response, and Exemption (7)(C) must be cited in the response. Additionally, in order to insure personal privacy is not violated during referrals, DoD Components shall coordinate with other DoD Components or Federal Agencies **before** referring a record that is exempt under the Glomar concept.

A "refusal to confirm or deny" response must be used consistently, not only when a record exists, but also when a record does not exist. Otherwise, the pattern of using a "no

records" response when a record does not exist and a "refusal to confirm or deny" when a record does exist will itself disclose personally private information.

Refusal to confirm or deny should not be used when 1) the person whose personal privacy is in jeopardy has provided the requester with a waiver of his or her privacy rights; or 2) the person whose personal privacy is in jeopardy is deceased, and the Agency is aware of that fact.

Could reasonably be expected to disclose the identity of a confidential source, including a source within the Department of Defense; a State, local, or foreign agency or authority; or any private institution that furnishes the information on a confidential basis; and could disclose information furnished from a confidential source and obtained by a criminal law enforcement authority in a criminal investigation or by an Agency conducting a lawful national security intelligence investigation (5 U.S.C. 552(b)(7)(D)).

Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law (5 U.S.C. 552(b)(7)(E)).

Could reasonably be expected to endanger the life or physical safety of any individual (5 U.S.C. 552(b)(7)(F)).

Some examples of Exemption 7 are:

Statements of witnesses and other material developed during the course of the investigation and all materials prepared in connection with related Government litigation or adjudicative proceedings.

The identity of firms or individuals being investigated for alleged irregularities involving contracting with the Department of Defense when no indictment has been obtained nor any civil action filed against them by the United States.

Information obtained in confidence, expressed or implied, in the course of a criminal investigation by a criminal law enforcement Agency or office within a DoD Component, or a lawful national security intelligence investigation conducted by an authorized Agency or office within a DoD Component. National security intelligence investigations include background security investigations and those investigations conducted for the purpose of obtaining affirmative or counterintelligence information.

The right of individual litigants to investigative records currently available by law is not diminished.

Exclusions. Excluded from the above exemption are the below two situations applicable to the Department of Defense.

Whenever a request is made that involves access to records or information compiled for law enforcement purposes, and the investigation or proceeding involves a possible violation of criminal law where there is reason to believe that the subject of the investigation or proceeding is unaware of its pendency, and the disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings, Components may, during only such times as that circumstance continues, treat the records or information as not subject to the FOIA. In such situation, the response to the requester will state that no records were found.

Whenever informant records maintained by a criminal law enforcement organization within a DoD Component under the informant's name or personal identifier are requested by a third party using the informant's name or personal identifier, the Component may treat the records as not subject to the FOIA, unless the informant's status as an informant has been officially confirmed. If it is determined that the records are not subject to 5 U.S.C. 552(b)(7), the response to the requester will state that no records were found.

### *Exemption 8 - Records of Financial Institutions Highlights*

Those contained 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.

### *Exemption 9 - Oil and Gas Well Data*

Those containing geological and geophysical information and data (including maps) concerning wells.

## **CHAPTER 7 - HOW ARE FEES ASSESSED FOR FOIA SEARCHES?**

The following is an explanation of FOIA fees, waivers and requester classification from DoD 5400.7-R, DoD Freedom of Information Act Program. These rules of usage should be followed by the Agency personnel when determining FOIA requester classification and the application of possible FOIA fees.

Collection of fees will be made at the time of providing the documents to the requester or recipient when the requester specifically states that the costs involved shall be acceptable or acceptable up to a specified limit that covers the anticipated costs. Collection of fees may not be made in advance unless the requester has failed to pay previously assessed fees within 30 calendar days from the date of the billing by DCAA, or the Agency has determined that the fee will be in excess of \$250.

Search Time.

Manual Search.

Type Grade Hourly Rate (\$)  
Clerical E9/GS8 and below 24  
Professional O1-O6/GS9-GS15 48  
Executive O7/GS16/ES1 and above 110

Computer Search. Fee assessments for computer search consists of two parts; individual time (hereafter referred to as human time), and machine time.

Human time. Human time is all the time spent by humans performing the necessary tasks to prepare the job for a machine to execute the run command. If execution of a run requires monitoring by a human, that human time may be also assessed as computer search. The terms “programmer/operator” shall not be limited to the traditional programmers or operators. Rather, the terms shall be interpreted in their broadest sense to incorporate any human involved in performing the computer job (e.g. technician, administrative support, operator, programmer, database administrator, or action officer).

Machine time. Machine time involves only direct costs of the Central Processing Unit (CPU), input/output devices, and memory capacity used in the actual computer configuration. Only this CPU rate shall be charged. No other machine related costs shall be charged. In situations where the capability does not exist to calculate CPU time, no machine costs can be passed on to the requester. When CPU calculations are not available, only human time costs shall be assessed to requesters.

Duplication.

Type Cost per Page (cents)  
Pre-Printed material 02

Office copy 15  
Computer copies (tapes,  
discs or printouts)  
Actual cost of duplicating the tape, disc or printout  
(includes operator's time and cost of the medium)

Review Time (in the case of commercial requesters).

Type Grade Hourly Rate (\$)  
Clerical E9/GS8 and below 24  
Professional O1-O6/GS9-GS15 48  
Executive O7/GS16/ES1 and above 110

Audiovisual Documentary Materials. Search costs are computed as for any other record. Duplication cost is the actual direct cost of reproducing the material, including the wage of the person doing the work. Audiovisual materials provided to a requester need not be in reproducible format or quality.

Other Records. Direct search and duplication cost for any record not described in this section shall be computed in the manner described for audiovisual documentary material.

### **FEE WAIVERS**

Documents shall be furnished without charge, or at a charge reduced below fees assessed to the categories of requesters, when the Agency determines that waiver or reduction of the fees is in the public interest because furnishing the information is likely to contribute significantly to public understanding of the operations or activities of DCAA and is not primarily in the commercial interest of the requester.

When assessable costs for a FOIA request total \$15.00 or less, fees shall be waived automatically for all requesters, regardless of category.

Decisions to waive or reduce fees that exceed the automatic waiver threshold shall be made on a case-by-case basis, consistent with the following factors:

Disclosure of the information "is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government."

The subject of the request. The Agency should analyze whether the subject matter of the request involves issues that will significantly contribute to the public understanding of the operations or activities of the DCAA. Requests for records in the possession of the DCAA which were originated by non-government organizations and are sought for their intrinsic content, rather than informative value, will likely not contribute to public understanding of the operations or activities of the DCAA. An example of such records might be press clippings, magazine articles, or records forwarding a particular opinion or concern from a member of the

public regarding a DCAA activity. Similarly, disclosures of records of considerable age may or may not bear directly on the current activities of the DCAA; however, the age of a particular record shall not be the sole criteria for denying relative significance under this factor. It is possible to envisage an informative issue concerning the current activities of the Agency, based upon historical documentation. Requests of this nature must be closely reviewed consistent with the requester's stated purpose for desiring the records and the potential for public understanding of the operations and activities of the DCAA.

The informative value of the information to be disclosed. This factor requires a close analysis of the substantive contents of a record, or portion of the record, to determine whether disclosure is meaningful, and shall inform the public on the operations or activities of the Agency. While the subject of a request may contain information that concerns operations or activities of the Agency, it may not always hold great potential for contributing to a meaningful understanding of these operations or activities. An example of such would be a previously released record that has been heavily redacted, the balance of which may contain only random words, fragmented sentences, or paragraph headings. A determination as to whether a record in this situation will contribute to the public understanding of the operations or activities of the Agency must be approached with caution, and carefully weighed against the arguments offered by the requester. Another example is information already known to be in the public domain. Disclosure of duplicative, or nearly identical information already existing in the public domain may add no meaningful new information concerning the operations and activities of the Agency.

The contribution to an understanding of the subject by the general public likely to result from disclosure. The key element in determining the applicability of this factor is whether disclosure will inform, or have the potential to inform the public, rather than simply the individual requester or small segment of interested persons. The identity of the requester is essential in this situation in order to determine whether such requester has the capability and intention to disseminate the information to the public. Mere assertions of plans to author a book, researching a particular subject, doing doctoral dissertation work, or indigence are insufficient without demonstrating the capacity to further disclose the information in a manner that will be informative to the general public. Requesters should be asked to describe their qualifications, the nature of their research, the purpose of the requested information, and their intended means of dissemination to the public.

The significance of the contribution to public understanding. In applying this factor, the Agency must differentiate the relative significance or impact of the disclosure against the current level of public knowledge, or understanding which exists before the disclosure. In other words, will disclosure on a current subject of wide public interest be unique in contributing previously unknown facts, thereby enhancing public knowledge, or will it basically duplicate what is already known by the general public? A decision regarding significance requires objective judgment, rather than subjective determination, and must be applied carefully to determine whether disclosure will likely lead to a significant public understanding of the issue. The Agency shall not make value judgments as to whether the information is important enough to be made public.

Disclosure of the information "is not primarily in the commercial interest of the requester."

The existence and magnitude of a commercial interest. If the request is determined to be of a commercial interest, the Agency should address the magnitude of that interest to determine if the requester's commercial interest is primary, as opposed to any secondary personal or non-commercial interest. In addition to profit-making organizations, individual persons or other organizations may have a commercial interest in obtaining certain records. Where it is difficult to determine whether the requester is of a commercial nature, the Agency may draw inference from the requester's identity and circumstances of the request. The Agency is reminded that in order to apply the commercial standards of the FOIA, the requester's commercial benefit must clearly override any personal or non-profit interest.

The primary interest in disclosure. Once a requester's commercial interest has been determined, the Agency should then determine if this disclosure would be primarily in that interest. This requires a balancing test between the commercial interest of the request against any public benefit to be derived as a result of that disclosure. Where the public interest is served above and beyond that of the requester's commercial interest, a waiver or reduction of fees would be appropriate. Conversely, even if a significant public interest exists, and the relative commercial interest of the requester is determined to be greater than the public interest, then a waiver or reduction of fees would be inappropriate. As examples, news media organizations have a commercial interest as business organizations; however, their inherent role of disseminating news to the general public can ordinarily be presumed to be of a primary interest. Therefore, any commercial interest becomes secondary to the primary interest in serving the public. Similarly, scholars writing books or engaged in other forms of academic research, may recognize a commercial benefit, either directly, or indirectly (through the institution they represent); however, normally such pursuits are primarily undertaken for educational purposes, and the application of a fee charge would be inappropriate. Conversely, data brokers or others who merely compile Government information for marketing can normally be presumed to have an interest primarily of a commercial nature. The Agency is reminded that the factors and examples used are not all inclusive. Each fee decision must be considered on a case-by-case basis and upon the merits of the information provided in each request. When the element of doubt as to whether to charge or waive the fee cannot be clearly resolved, the Agency should rule in favor of the requester.

In addition, the following additional circumstances describe situations where waiver or reduction of fees are most likely to be warranted:

A record is voluntarily created to prevent an otherwise burdensome effort to provide voluminous amounts of available records, including additional information not requested.

A previous denial of records is reversed in total, or in part, and the assessable costs are not substantial (e.g. \$15.00 - \$30.00).

## **FEE ASSESSMENT**

Fees may not be used to discourage requesters, and to this end, FOIA fees are limited to standard charges for direct document search, review (in the case of commercial requesters) and duplication.

In order to be as responsive as possible to FOIA requests while minimizing unwarranted costs to the taxpayer, the Agency shall adhere to the following procedures:

Analyze each request to determine the category of the requester. If the Agency determination regarding the category of the requester is different than that claimed by the requester, the Agency shall:

Notify the requester to provide additional justification to warrant the category claimed, and that a search for responsive records will not be initiated until agreement has been attained relative to the category of the requester. Absent further category justification from the requester, and within a reasonable period of time (i.e., 30 calendar days), the Agency shall render a final category determination, and notify the requester of such determination, to include normal administrative appeal rights of the determination.

Advise the requester that, notwithstanding any appeal, a search for responsive records will not be initiated until the requester indicates a willingness to pay assessable costs appropriate for the category determined by the Agency.

Requesters should submit a fee declaration appropriate for the below categories.

**Commercial.** Requesters should indicate a willingness to pay all search, review and duplication costs.

**Educational or Noncommercial Scientific Institution or News Media.** Requesters should indicate a willingness to pay duplication charges in excess of 100 pages if more than 100 pages of records are desired.

Requesters should indicate a willingness to pay assessable search and duplication costs if more than two hours of search effort or 100 pages of records are desired.

If the above conditions are not met, then the request need not be processed and the requester shall be so informed.

The Agency must be prepared to provide an estimate of assessable fees if desired by the requester. While it is recognized that search situations will vary, and that an estimate is often difficult to obtain prior to an actual search, requesters who desire estimates are entitled to such before committing to a willingness to pay. Should DCAA's actual costs exceed the amount of the estimate or the amount agreed to by the requester, the amount in excess of the estimate or the requester's agreed amount shall not be charged without the requester's agreement.

No DoD Component may require advance payment of any fee; i.e., payment before work is commenced or continued on a request, unless the requester has previously failed to pay fees in a timely fashion, or the Agency has determined that the fee will exceed \$250.00. As used in this sense, a timely fashion is 30 calendar days from the date of billing (the fees have been assessed in writing) by the Agency.

Whereas the Agency estimates or determines that allowable charges that a requester may be required to pay are likely to exceed \$250.00, the Agency shall notify the requester of the likely cost and obtain satisfactory assurance of full payment where the requester has a history of prompt payments, or require an advance payment of an amount up to the full estimated charges in the case of requesters with no history of payment.

Where a requester has previously failed to pay a fee charged in a timely fashion (i.e., within 30 calendar days from the date of the billing), the Agency may require the requester to pay the full amount owed, plus any applicable interest, or demonstrate that he or she has paid the fee, and to make an advance payment of the full amount of the estimated fee before the Agency begins to process a new or pending request from the requester. Interest will be at the rate prescribed in 31 U.S.C. 3717, and confirmed with respective Finance and Accounting Offices.

After all work is completed on a request, and the documents are ready for release, the Agency may request payment before forwarding the documents, particularly for those requesters who have no payment history, or for those requesters who have failed previously to pay a fee in a timely fashion (i.e., within 30 calendar days from the date of the billing).

The administrative time limits of the FOIA will begin only after the Agency has received a willingness to pay fees and satisfaction as to category determination, or fee payments (if appropriate).

The Agency may charge for time spent searching for records, even if that search fails to locate records responsive to the request. The Agency may also charge search and review (in the case of commercial requesters) time if records located are determined to be exempt from disclosure. In practice, if the Agency estimates that search charges are likely to exceed \$25.00, we shall notify the requester of the estimated amount of fees, unless the requester has indicated in advance his or her willingness to pay fees as high as those anticipated. Such a notice shall offer the requester the opportunity to confer with Agency personnel with the object of reformulating the request to meet his or her needs at a lower cost.

**Commercial Requesters.** Fees shall be limited to reasonable standard charges for document search, review and duplication when records are requested for commercial use. Requesters must reasonably describe the records sought.

The term "commercial use" request refers to a request from, or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interest of the requester or the person on whose behalf the request is made. In determining whether a requester properly belongs in this category, the Agency must determine the use to which a requester will put the documents requested. Moreover, when the Agency has reasonable cause to doubt the use

to which a requester will put the records sought, or where that use is not clear from the request itself, the Agency should seek additional clarification before assigning the request to a specific category.

When the Agency receives a request for documents for commercial use, we should assess charges which shall recover the full direct costs of searching for, reviewing for release, and duplicating the records sought. Commercial requesters (unlike other requesters) are not entitled to two hours of free search time, nor 100 free pages of reproduction of documents. Moreover, commercial requesters are not normally entitled to a waiver or reduction of fees based upon an assertion that disclosure would be in the public interest. However, because use is the exclusive determining criteria, it is possible to envision a commercial enterprise making a request that is not for commercial use. It is also possible that a non-profit organization could make a request that is for commercial use. Such situations must be addressed on a case-by-case basis.

**Educational Institution Requesters.** Fees shall be limited to only reasonable standard charges for document duplication (excluding charges for the first 100 pages) when the request is made by an educational institution whose purpose is scholarly research. Requesters must reasonably describe the records sought. The term "educational institution" refers to a pre-school, a public or private elementary or secondary school, an institution of graduate high education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research. Fees shall be waived or reduced in the public interest if the criteria have been met.

**Non-Commercial Scientific Institution Requesters.** Fees shall be limited to only reasonable standard charges for document duplication (excluding charges for the first 100 pages) when the request is made by a non-commercial scientific institution whose purpose is scientific research. Requesters must reasonably describe the records sought. The term "non-commercial scientific institution" refers to an institution that is not operated on a "commercial" basis, and that is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry. Fees shall be waived or reduced in the public interest if the criteria, have been met.

DCAA shall provide documents to these requesters for the cost of duplication alone, excluding charges for the first 100 pages. To be eligible for inclusion in these categories, requesters must show that the request is being made under the auspices of a qualifying institution and that the records are not sought for commercial use, but in furtherance of scholarly (from an educational institution) or scientific (from a non-commercial scientific institution) research.

**Representatives of the news media.** Fees shall be limited to only reasonable standard charges for document duplication (excluding charges for the first 100 pages) when the request is made by a representative of the news media. Requesters must reasonably describe the records sought. Fees shall be waived or reduced if the criteria has been met.

The term "representative of the news media" refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the

public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. These examples are not meant to be all-inclusive. Moreover, as traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. In the case of "freelance" journalists, they may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but the Agency may also look to the past publication record of a requester in making this determination.

To be eligible for inclusion in this category, a requester must meet the criteria listed above, and his or her request must not be made for commercial use. A request for records supporting the news dissemination function of the requester shall not be considered to be a request that is for a commercial use. For example, a document request by a newspaper for records relating to the investigation of a defendant in a current criminal trial of public interest could be presumed to be a request from an entity eligible for inclusion in this category, and entitled to records at the cost of reproduction alone (excluding charges for the first 100 pages).

"Representative of the news media" does not include private libraries, private repositories of Government records, information vendors, data brokers *or similar marketers of information whether to industries and businesses, or other entities.*

All Other Requesters. The Agency shall charge requesters who do not fit into any of the categories described above, fees which recover the full direct cost of searching for and duplicating records, except that the first two hours of search time and the first 100 pages of duplication shall be furnished without charge. Requesters must reasonably describe the records sought. Requests from subjects about themselves will continue to be treated under the fee provisions of the Privacy Act of 1974, which permit fees only for duplication.

Aggregating Requests. Except for requests that are for a commercial use, the Agency may not charge for the first two hours of search time or for the first 100 pages of reproduction. However, a requester may not file multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment of fees. If DCAA reasonably believes that a requester or, on rare occasions, 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 Agency may aggregate any such requests and charge accordingly. One element to be considered in determining whether a belief would be reasonable is the time period in which the requests have occurred. For example, it would be reasonable to presume that multiple requests of this type made within a 30-day period had been made to avoid fees. For requests made over a longer period however, such a presumption becomes harder to sustain and the Agency should have a solid basis for determining that aggregation is warranted in such cases. The Agency is cautioned that before aggregating requests from more than one requester, we must have a concrete basis on

which to conclude that the requesters are acting in concert and are acting specifically to avoid payment of fees. In no case may the Agency aggregate multiple requests on unrelated subjects from one requester.

## **CHAPTER 8 – THE PRIVACY ACT AND FOIA**

### **The Privacy Act of 1974**

#### **Highlights**

The FOIA applies to all Agency records. The Privacy Act applies only to records about individuals maintained in Privacy Act systems of records.

A person may request records about himself or herself under either the FOIA or Privacy Act, or both. DCAA will normally give the person as much information as would be available under either Act.

DCAA has systems of records, such as personnel records, security files, which contain personal information.

DCAA is required by the Privacy Act to maintain only such information about employees as is necessary and relevant for an Agency purpose. It is also required to assure that its records about individuals are as accurate, relevant, timely, and complete as necessary to assure fairness.

#### **How Do the FOIA and Privacy Acts Differ?**

Under FOIA, a person may obtain access to any Government record, including records about himself or herself, unless the records fall within one of the nine exemptions to the Act. The Privacy Act, on the other hand, is limited only to records about individuals which are maintained in a "system of records" from which information is retrieved by his or her name or other personal identifier. If the records are not maintained by the Agency in a "system of records," the Privacy Act does not apply, and the person would have to seek access to the information under the provisions of the FOIA.

A difficult question arises when access to information in one person's file would affect the personal privacy of another person. For example, one court refused to give the address of minor children to an unmarried father who was paying child support, but who did not have visitation rights, even though the addresses were listed in the father's social security account. Similarly, it is doubtful if DCAA would make available to an employee derogatory information about his or her spouse that is contained in the employee's security file. Courts reason, in these cases, that the information does not pertain to the individual. Of course, if information is misfiled or placed in a person's file by accident, it may clearly be withheld.

#### **What is a System of Records?**

A system of records is a group of records under the control of an Agency from which information is retrieved by the name of the individual or by some other identifying particular assigned to the individual, such as a social security number, badge number, fingerprint, or voice print. To be considered a system of records, it is not enough that the records are retrievable by reference to an individual's name if the records are not normally accessed in that manner. Thus,

a reading file, chronological file, or any other grouping of records that is not normally accessed by a person's name, even if it is possible to locate a record about an individual by manually searching the file, is not a system of records under the Privacy Act.

Each agency is required to identify and publish its systems of records in the Federal Register, and no new system of records may be established without the Agency first notifying Congress and OMB, and announcing the system in the Federal Register.

### **How Does the Privacy Act Control Access to Agency Records?**

Like the FOIA, the Privacy Act has certain exemptions to its access provisions. Section 552a(k) of the Act provides that the Agency may promulgate rules exempting any system of records from the access and certain other provisions of the Act if the records are:

1. Classified
2. Investigatory material compiled for law enforcement purposes
3. Maintained in connection with providing protective services to the President
4. Required by statute to be maintained and used solely as statistical records
5. Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information,
6. Testing or examination material used solely to determine individual qualifications for appointment or promotion in the federal service, the disclosure of which would compromise the objectivity or fairness of the testing or examination process, or
7. Evaluation material used to determine potential for promotion in the armed services.

### **Are Personal Records under the FOIA and the Privacy Act the Same?**

With regard to the distinction under the FOIA between "agency records" which are subject to the FOIA and "personal records" which are not subject to the FOIA, it should be noted that personal records under the Privacy Act have the same meaning as under the FOIA (see discussion in Chapter 2). Thus, personal records would not normally be available if requested under the Privacy Act.

"Personal Records" [are], uncirculated personal notes, papers and records which are retained or discarded at the author's sole discretion and over which the DCAA exercises no control or dominion. However, if a "personal record" is shown or transmitted to any other individual, it becomes an Agency record subject to the requirements of the Privacy Act. Furthermore, if "personal records" are maintained in the same file as, or

commingled with Agency records, there is a presumption that they are Agency records also.

(Note: In a 1986 case, the court held that memos which were kept in a supervisor's desk along with official personnel records and which were left behind when the supervisor was assigned to another base were agency records and not personal records).

### **How Much Information about Individuals can Agencies Collect?**

Agencies are required to maintain only such information about employees as is relevant and necessary to accomplish an Agency purpose. To the extent possible, agencies are also required to collect information directly from the individuals involved and, if an Agency form is used to solicit personal information, to provide a Privacy Act Statement. A Privacy Act Statement informs the individual furnishing the information as to the reasons for requesting the information, the authority which authorizes the solicitation of the information, whether disclosure is mandatory or voluntary, how it will be used, and what the consequences are, if any, of not providing the information.

Agencies are also required to maintain their records concerning any individual with such accuracy, relevance, timeliness and completeness as is necessary to assure fairness in any determination relating to the qualifications, character, rights, opportunities, or benefits due to the individual.

### **When can Agencies Permit Access to Personal Information?**

The general rule in the Privacy Act is that no Agency shall disclose any record which is contained in a system of records to any person except in response to a written request by, or with the prior written consent of, the individual to whom the record pertains. The Act has 12 exceptions, the first three of which are utilized most frequently by agencies. Records may be disclosed:

to those officers and employees of the agency who have a need for the records in the performance of their official duties,  
if required pursuant to the FOIA and,

for any "routine use."

A "routine use" is defined as "any use of a record which is compatible with the purpose for which the record was collected."

## **CHAPTER 9 – THE FOIA AND CONTROLLED UNCLASSIFIED INFORMATION**

### **What is Controlled Unclassified Information?**

Controlled Unclassified Information (CUI) is government created or owned information that requires safeguarding or dissemination controls applicable with laws, regulations, and government wide policies.

### **Does a CUI Marking Make a Document Automatically Exempt from a FOIA Request?**

No, there is no marking that automatically determines what the Chief FOIA Officer should do with a CUI marked document. The basis for that determination is the substance of the information in the document. Additionally, it is not appropriate to treat the FOIA as a CUI control authority.

### **How to Process CUI Documents Under the FOIA**

When determining whether to disclose information in response to a FOIA request, the decision must be based upon content of the information and the applicability of any FOIA exemptions at the time the review is being made, regardless of whether the document is marked as containing CUI.

## **CHAPTER 10 – THE FOIA AND CONGRESSIONAL REQUESTS**

### **Freedom of Information Act Prohibition on Withholding Information from Congress - Transmittal of Sensitive Documents to Congress**

#### **Highlights**

The FOIA specifically provides that the Act may not be used to withhold information from Congress.

Where records requested by Congress are exempt under the FOIA, Congress is notified of that fact and requested to maintain the records in confidence.

All Congressional requests for records should be referred to the Headquarters, Policy and Plans Directorate, Auditing Standards Division (PAS).

DCAA provides documents to Congress not available to the general public only when requested by a committee or subcommittee chairman or ranking minority member which has jurisdiction over DCAA. The Agency is not required to provide documents to committees or subcommittees who do not have jurisdiction over DCAA.

#### **Can the FOIA be Used to Withhold Information from Congress?**

Section 552(d) of the FOIA specifically provides that "this section is not an authority to withhold information from Congress." The only way information can be formally withheld from Congress is through a claim of Executive Privilege.

Members of Congress, Members of Congressional Committees, and their staffs often request copies of classified and unclassified sensitive documents. Procedures have been established by the PAS to assure that these Congressional requests are treated uniformly and responded to promptly.

# **Appendix A - The Freedom of Information Act, 5 U.S.C. § 552 and Code of Federal Regulations, 32 CFR Part 286**

1. The Freedom of Information Act, 5 U.S.C. § 552 is available from the Department of Justice's web site at <https://www.justice.gov/oip/freedom-information-act-5-usc-552>
2. The DoD Freedom of Information Act Program regulation has been published in the Federal Register as 32 CFR Part 286. It may be accessed through the Agency web site [http://www.dcaa.mil/FOIA/FOIA\\_Reading\\_Room.html](http://www.dcaa.mil/FOIA/FOIA_Reading_Room.html)

## **Appendix B - The Privacy Act of 1974, 5 U.S.C. §552a**

The Privacy Act of 1974, 5 U.S.C. §552a, is available from the Defense Privacy and Civil Liberties Division's web site at

<http://dpcl.d.defense.gov/Portals/49/Documents/Privacy/pa1974.pdf>

# Appendix C - Reference Material

## Government Publications

### Regulatory Issuances

Title 5, United States Code, 552, The Freedom of Information Act  
Title 5, United States Code, 552a, The Privacy Act of 1974

### Department of Defense

DoD Directive 5105.36, Defense Contract Audit Agency  
DoD Directive 5400.7, DoD Freedom of Information Act Program  
DoD Directive 5400.11, Department of Defense Privacy Program  
DoD 5400.7-R, DoD Freedom of Information Act Program  
DoD 5400.11-R, Department of Defense Privacy Program  
DoD FAR Supplement, Appendix G Activity Address Numbers  
DoD Handbook 4105.59-H, DoD Directory of Contract Administration Services Components

DCAA Instruction 5410.8, DCAA Freedom of Information Act Program  
DCAA Instruction 5410.10, DCAA Privacy Act Program

### Other Federal Agencies

OMB Circular A-130, Management of Federal Information Resources (50 FR 52730)  
OMB FOIA Reform Act of 1986; Uniform FOIA Fee Schedule and Guidelines (52 FR 10012)  
OMB Privacy Act Implementation (40 FR 28948)

## Appendix D - Pro Forma Paragraphs

### Exemptions

b(1) (b)(1), information that is properly classified in the interest of national security.

b(2) (b)(2), as it applies to operating rules and guidelines that must remain privileged in order for this Agency to adequately fulfill its mission.

b(3) (b)(3), information exempted from release by statute, in this instance [specify statute].

b(4) (b)(4), the disclosure of trade secrets, commercial and financial data could cause substantial harm to the competitive position of the entity from which the information was obtained, could impair the ability of the Government to obtain such information in the future or could impair some other legitimate Government interest.

b(5) (b)(5), information is predecisional inter/intra agency data that is part of a decision-making process containing opinions and recommendations.

b(6) (b)(6), the disclosure of information would constitute a clearly unwarranted invasion of personal privacy of individuals.

b(7)(A) (b)(7)(A), the disclosure of any portion of the investigation at this time could reasonably be expected to interfere with law enforcement proceedings. We do not have a timeframe for the completion of this investigation.

B(7)(C), (b)(7)(C), to records or information compiled for law enforcement purposes, the release of which could reasonably be expected to constitute an unwarranted invasion of the personal privacy of (a) third (party/parties).

### Foreseeable Harm Standard

I have carefully reviewed the documents responsive to your FOIA request and have determined that the enclosed document that originated with the Defense Contract Audit Agency may be released to you with redactions. The redactions are in accordance with the FOIA under the following exemption: (b)(6), the disclosure of information would constitute a clearly unwarranted invasion of personal privacy of individuals. My review included consideration of the “foreseeable harm standard” (i.e., that information which might technically fall within an exemption should not be withheld from a FOIA requester unless the agency can identify a foreseeable harm or legal bar to disclosure).

### Fee Waiver Request

With respect to the portion of your letter seeking a waiver of the customary fees, we will be in a position to make a decision on that request once our records search is completed.

## Appeal Rights

The following statement must be made on each response containing denials:

Should you disagree with the finding cited above, you may appeal in writing within 60 calendar days from the date of this letter to the General Counsel, DCAA Office of General Counsel, at the above address.

You also have a right to seek dispute resolution services from the DCAA FOIA Public Liaison, Ms. Temple L. Wilson, at the above address. Additionally, you have the right to contact the Office of Government Information Services (OGIS) to inquire about the FOIA mediation services they offer. The contact information for OGIS is: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at [ogis@nara.gov](mailto:ogis@nara.gov); telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769. If you have further questions, please contact me at 571-448-3153.

## Mission Statement

Our mission is to produce audit reports for contracting offices; these audit reports are the property of DoD contracting offices and their release is at the sole discretion of those offices. Therefore, we recommend that you send any requests for audit reports to the contracting officer's FOIA office.

# **Appendix E – Agency Freedom of Information and Privacy Act Points of Contact**

Headquarters, DCAA

Defense Contract Audit Agency  
ATTN: DL/FOIA  
8725 John J. Kingman Road, Suite 2135  
Fort Belvoir, VA 22060-6219  
(TEL) (571) 448-3153

FOIA Public Liaison

Defense Contract Audit Agency  
ATTN: Deputy General Counsel, Ethics,  
Employment and Administrative Law  
8725 John K. Kingman Road, Suite 2135  
Fort Belvoir, VA 22060-6219  
(TEL) (571) 448-3153

# Appendix F – Boilerplate Letters and Memorandums

## ACKNOWLEDGEMENT LETTER

DL 502.4  
I-22-XXX-H

Address

Dear Sir:

This letter is in response to your Freedom of Information Act (FOIA) request dated July 6, 2022, and received in this office on July 9, 2022. You are requesting:

We are processing FOIA requests that were received prior to yours. In an attempt to afford each requester equal and impartial treatment, we have adopted a general practice of assigning requests in the order of receipt. Your FOIA request has been assigned case number I-22-XXX-H. Please mention this number in any future correspondence to this agency regarding this matter.

We will notify you of the decision on your FOIA request as soon as possible. The necessity of this delay is regretted and your continuing courtesy is appreciated. Should you have any questions regarding this matter, please contact the DCAA Chief FOIA Officer at 571-448-3153.

Sincerely,

Keith O. Mastromichalis  
Chief FOIA Officer  
DCAA Office of General Counsel

# FOIA SEARCH TASKER MEMORANDUM

DL 503.2  
I-22-XXX-H

TO: O

FROM: DL

SUBJECT: Freedom of Information Request

The enclosed Freedom of Information Act (FOIA) request from: is forwarded to your office for review and action. (Requester) is requesting:

Please review the request and provide this office with copies of any responsive documents under your control. Provide your response along with a completed DCAA Form 5410-4, Freedom of Information Case Summary, to this office no later than (ten business days). If you have any questions, please contact the DCAA Chief FOIA Officer at (571) 448-3153.

Keith O. Mastromichalis  
Chief FOIA Officer  
DCAA Office of General Counsel

Enclosure:

1. FOIA Case I-22-XXX-H Request Letter

# RELEASE IN FULL FINAL RESPONSE LETTER

DL 502.4  
I-22-XXX-H

Address

Dear Sir:

This letter is a final response to your Freedom of Information Act (FOIA) request dated January 20, 2022 (DCAA FOIA Case Number I-22-XXX-H). You are requesting:

Enclosed is a copy of the DCAA Memorandum for Regional Directors, Audit Guidance/Management Memorandum No. 99-PFC-084(R), July 26, 1999. This Memorandum for Regional Directors that originated with the Defense Contract Audit Agency may be released to you without redactions.

For your information, the correct number for this DCAA Memorandum of Regional Directors is 99-PFC-084(R).

If you have any questions regarding this release of information in full, you may contact the DCAA FOIA Public Liaison, Mr. David R. Gallagher, at the above address. If you have any further questions regarding this matter, please contact the DCAA Chief FOIA Officer at 571-448-3153.

Sincerely,

Keith O. Mastromichalis  
Chief FOIA Officer  
DCAA Office of General Counsel

Enclosure:  
DCAA MRD 99-PFC-084(R)

# NO RECORDS FINAL RESPONSE LETTER

DL 502.4  
I-22-XXX-H

Address

Dear Sirs:

This responds to your March 22, 2022, Freedom of Information Act (FOIA) request (DCAA FOIA Case Number I-22-XXX-H) for:

We have reviewed your request in an effort to assist you. Based on the information you provided, we must conclude that we have no records responsive to your request.

DCAA's mission is to produce audit reports for contracting offices; these audit reports are the property of DoD contracting offices and their release is at the sole discretion of those offices. Therefore, we recommend that you send any requests for audit reports to the contracting officer's FOIA office.

Should you disagree with the finding cited above, you may appeal in writing within 90 calendar days from the date of this letter to the General Counsel, DCAA Office of General Counsel, at the above address.

You also have a right to seek dispute resolution services from the DCAA FOIA Public Liaison, Ms. Temple L. Wilson, at the above address. Additionally, you have the right to contact the Office of Government Information Services (OGIS) to inquire about the FOIA mediation services they offer. The contact information for OGIS is: Office of Government Information Service National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at [ogis@nara.gov](mailto:ogis@nara.gov); telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769. If you have further questions, please contact me at 571-448-3153.

Sincerely,

Keith O. Mastromichalis  
Chief FOIA Officer  
DCAA Office of General Counsel

# **NO RECORDS CONTRACT INFORMATION FINAL RESPONSE LETTER**

DL 502.4  
I-22-XXX-H

Address

Dear Sirs:

This responds to your March 24, 2022, Freedom of Information Act (FOIA) request (DCAA FOIA Case Number I-22-XXX-H) for:

We have reviewed your request in an effort to assist you. Based on the information you provided, we must conclude that we have no records responsive to your request.

The documents you are requesting would be associated with contracts. This Agency does not produce contracts. Our mission is to produce audit reports for contracting offices; these audit reports are the property of DoD contracting offices and their release is at the sole discretion of those offices. Therefore, we recommend that you send any requests for audit reports to the contracting officer's FOIA office.

You may find some information pertaining to contracts issued by the Federal government by contacting the Federal Procurement Data Center, 1800 F Street, NW, Washington, DC 20405-0002, (202) 219-3416 (<https://www.fpds.gov>).

Should you disagree with the finding cited above, you may appeal in writing within 90 calendar days from the date of this letter to the General Counsel, DCAA Office of General Counsel, at the above address.

You also have a right to seek dispute resolution services from the DCAA FOIA Public Liaison, Ms. Temple L. Wilson, at the above address. Additionally, you have the right to contact the Office of Government Information Services (OGIS) to inquire about the FOIA mediation services they offer. The contact information for OGIS is: Office of Government Information Services,

National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at [ogis@nara.gov](mailto:ogis@nara.gov); telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769. If you have further questions, please contact me at 571-448-3153.

Sincerely,

Keith O. Mastromichalis  
Chief FOIA Officer  
DCAA Office of General Counsel

# SUBMITTERS NOTICE LETTER

DL 502.4  
I-22-XXX-H

Address

Dear Sirs:

This is in reference to an August 26, 2022, Freedom of Information Act request from for the following information:

Under the provisions of the Federal of Information Act, we must determine whether these documents, or any part of them, contain confidential business information that is proprietary to your company and that should be withheld, therefore, from public disclosure under 5 U.S.C. § 552(b)(4). If the documents contain no propriety information, we will release the documents with redactions for personal privacy. If we determine that some materials in the documents are proprietary, the Freedom of Information Act requires us to segregate and withhold the proprietary portion and to release the rest to the requester.

Please review the enclosed documents. If you believe that any portion of the material in them is exempt from release, answer the following questions in sufficient detail to demonstrate, as to each portion, that the material should be withheld.

1. Was the information transmitted to, and received by DCAA in confidence? Please give detail.
2. To the best of your knowledge, is the information currently available in public sources?
3. Does your company customarily treat this information, or this type of information, as confidential? Please explain why.
4. Would public disclosure of this information be likely to cause substantial harm to the competitive position of your company? If so, how?

Please provide your response to the above questions to this office no later than TEN BUSINESS DAYS. If your response has not been received by this date, the requested materials will be process by this agency.

If you have further questions, please contact the DCAA Chief FOIA Officer at 571-448-3153.

Sincerely,

Keith O. Mastromichalis  
Chief FOIA Officer  
DCAA Office of General Counsel

# REFERRAL TO ANOTHER AGENCY MEMORANDUM

DL 502.4  
I-22-XXX-H

MEMORANDUM FOR DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
ROOM 10139  
451 7<sup>TH</sup> STREET, N.W.  
WASHINGTON, DC 20410

SUBJECT: Freedom of Information Act Request Referral  
REQUESTER  
FOIA Case Number I-22-XXX-H

This memorandum refers to the attached subject request. While processing this request, we identified your information consisting of five pages in our files. This attached information is referred for your review, release determination and direct response to (Requester). A copy of our response to the requester is attached. Please furnish this office with a copy of your final response to the requester.

This office has redacted information on the attached document that originated with this agency, we request the information to be withheld in accordance with the FOIA under exemption (b)(6), the disclosure of information would constitute a clearly unwarranted invasion of personal privacy of individuals. If you determine the attached document that is redacted should be released, please provide the following appeal information to the requester: Your appeal should be in writing to the Appellate Authority, Defense Contract Audit Agency: General Counsel, Office of General Counsel, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060-6219

Should you have any questions regarding this matter, please contact the DCAA Chief FOIA Officer at 571-448-3153.

Sincerely,

Keith O. Mastromichalis  
Chief FOIA Officer  
DCAA Office of General Counsel

Attachments:

1. DCAA I-22-XXX-H Request Letter
2. DCAA Referred Document

# FINAL RESPONSE LETTER

DL 502.4  
I-22-XXX-H

Address

Dear Sirs:

This letter is a final response to your Freedom of Information Act (FOIA) request dated April 11, 2022 (DCAA FOIA Case Number I-22-XXX-H). You are requesting:

USE PRO FORMA EXEMPTION PARAGRAPH(S)

Should you disagree with the finding cited above, you may appeal in writing within 90 calendar days from the date of this letter to the General Counsel, DCAA Office of General Counsel, at the above address.

You also have a right to seek dispute resolution services from the DCAA FOIA Public Liaison, Ms. Temple L. Wilson, at the above address. Additionally, you have the right to contact the Office of Government Information Services (OGIS) to inquire about the FOIA mediation services they offer. The contact information for OGIS is: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at [ogis@nara.gov](mailto:ogis@nara.gov); telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769. If you have further questions, please contact me at 571-448-3153.

Sincerely,

Keith O. Mastromichalis  
Chief FOIA Officer  
DCAA Office of General Counsel

# APPEAL ACKNOWLEDGEMENT LETTER

DL 502.4  
A-22-XXX-H

Address

Dear Sirs:

This is to acknowledge receipt of your May 22, 2022, letter in which you are appealing the no records responsive to your April 4, 2022, Freedom of Information Act request (DCAA FOIA Case Number I-22-XXX-H). Once our new search for responsive records in DCAA's Headquarters' Operations component is completed, we will offer you our final decision on the matter.

Should you have any questions related to the processing of your appeal, please contact the DCAA Chief FOIA Officer at (571) 448-3153.

Sincerely,

David C. Hoffman  
Acting General Counsel

## APPEAL FINAL RESPONSE LETTER

DL 502.4  
A-22-XXX-H

Address

Dear Sirs

This is in response to your May 22, 2022, Freedom of Information Act (FOIA) appeal letter in which you are appealing the no records denial to your April 4, 2022, Freedom of Information Act request (DCAA FOIA Case Number I-22-XXX-H).

Based upon the results of a new search for responsive records in our DCAA Livelink records management system and DCAA Headquarters Operations component, we have concluded that DCAA has no records responsive to your request.

This determination is the final decision of this Agency on your appeal. If you disagree with this decision, you may seek judicial review in the United States District Courts in the district where you are located, where the requested information is located, or in the U.S. District Court of the District of Columbia.

Should you have any further questions, please contact the DCAA Chief FOIA Officer at (571) 448-3153.

Sincerely,

David C. Hoffman  
Acting General Counsel

# Appendix G – FOIA Forms

<b>FOIA</b>
FREEDOM OF INFORMATION ACT

<b>ACTION</b>
<p><u>NOTE: RESPONSE TO REQUESTER MUST BE ACCOMPLISHED</u> <u>WITHIN 10 WORKING DAYS AFTER RECEIPT.</u> (PUBLIC LAW 93-502)</p> <p><u>DCAAR 5410.8</u> <u>32 CFR PART 290</u></p>

DCAA Label 1 (EF)  
November 1991

HANDCARRY

**FREEDOM**

**OF**

**INFORMATION**

**ACT**

REQUEST

HANDCARRY

DCAA Label 2 (EF)  
November 1991

**Freedom of Information  
Cost Estimate Worksheet**

**I. Search Time**

**a. Manual Search**

<u>Type</u>	<u>Grade</u>	<u>Hourly Rate(s)</u>	<u>X</u>	<u>Total Hours</u>	<u>=</u>	<u>Cost</u>
Clerical	GS8 and below I	\$20.00		_____	=	_____
Professional	GS9-GS15	\$44.00		_____	=	_____
Executive	GS16/ES1 and above	\$75.00		_____	=	_____

b. Computer search is based on direct cost of the central processing unit, input-output devices, and memory capacity of the actual computer configuration. The salary scale (equating to paragraph a. above) for the computer operator/programmer determining how to conduct and subsequently executing the search will be recorded as part of the computer search.

Subtotal \_\_\_\_\_

**II. Duplication**

<u>Type</u>	<u>Cost per Pages(s)</u>	<u>X</u>	<u>Total Pages</u>	<u>=</u>	<u>Cost</u>
Pre-Printed material	\$ .02		_____	=	_____
Office Copy	\$ .15		_____	=	_____
Microfiche	\$ .25		_____	=	_____
Computer copies (tapes or printouts)	Actual cost of duplicating the tape or printout (includes operator's time and cost of the tape.)		_____	=	_____

Subtotal \_\_\_\_\_

**III. Review Time (in the case of commercial requesters)**

**a. Cognizant HPSE**

<u>Type</u>	<u>Grade</u>	<u>Hourly Rate(s)</u>	<u>X</u>	<u>Total Hours</u>	<u>=</u>	<u>Cost</u>
Clerical	GS8 and below I	\$20.00		_____	=	_____
Professional	GS9-GS15	\$44.00		_____	=	_____
Executive	GS16/ES1 and above	\$75.00		_____	=	_____

**b. Office of Counsel**

<u>Type</u>	<u>Grade</u>	<u>Hourly Rate(s)</u>	<u>X</u>	<u>Total Hours</u>	<u>=</u>	<u>Cost</u>
Clerical	GS8 and below I	\$20.00		_____	=	_____
Professional	GS9-GS15	\$44.00		_____	=	_____
Executive	GS16/ES1 and above	\$75.00		_____	=	_____

**c. Other Staff Elements**

<u>Type</u>	<u>Grade</u>	<u>Hourly Rate(s)</u>	<u>X</u>	<u>Total Hours</u>	<u>=</u>	<u>Cost</u>
Clerical	GS8 and below I	\$20.00		_____	=	_____
Professional	GS9-GS15	\$44.00		_____	=	_____
Executive	GS16/ES1 and above	\$75.00		_____	=	_____

Subtotal \_\_\_\_\_

Total I-III \_\_\_\_\_

### FREEDOM OF INFORMATION CASE SUMMARY

1. REQUEST NUMBER: _____		2. TYPE OF REQUEST: <input type="checkbox"/> INITIAL <input type="checkbox"/> APPEAL		3. TYPE OF REQUESTER: <input type="checkbox"/> COMMERCIAL <input type="checkbox"/> NEWS MEDIA <input type="checkbox"/> OTHER <input type="checkbox"/> SCIENTIFIC/EDUCATIONAL INSTITUTION	
4. ACTIONS TAKEN: <input type="checkbox"/> GRANTED IN FULL <input type="checkbox"/> GRANTED IN PART <input type="checkbox"/> DENIED <input type="checkbox"/> LACK OF RECORDS <input type="checkbox"/> NOT AN AGENCY RECORD <input type="checkbox"/> RECORDS NOT DESCRIBED <input type="checkbox"/> REQUESTER NON COMPLIANCE <input type="checkbox"/> REQUEST WITHDRAWN <input type="checkbox"/> TRANSFERRED TO: _____					
5. EXEMPTIONS INVOKED: <input type="checkbox"/> B1 <input type="checkbox"/> B2 <input type="checkbox"/> B3 AND STATUTE _____ <input type="checkbox"/> B6 <input type="checkbox"/> B7 <input type="checkbox"/> B5 <input type="checkbox"/> B7 <input type="checkbox"/> B9 <input type="checkbox"/> B7A					
6. EXTENSIONS: <input type="checkbox"/> LOCATION <input type="checkbox"/> VOLUME <input type="checkbox"/> CONSULTATION <input type="checkbox"/> COURT INVOLVEMENT    * Chargeable to the requester ** Chargeable to commercial requesters					
<b>7. PROCESSING COST</b>					
Grade levels for each type of direct cost listed below will be as follows: Clerical (GS-8 and below), Professional (GS-9 - GS-15) and Executive (GS-16 and above).					
TYPE OF PROCESS (A)	TYPE OF DIRECT COST (B)	HOURLY RATE (C)	NUMBER OF HOURS (D)	COST (C X D) (E)	TOTAL COST (ADD FIGURES IN COLUMN E FOR EACH PROCESS) (F)
Search	Clerical	\$20.00		\$0.00	\$0.00 *
	Professional	\$44.00		\$0.00	
Review/Excising	Clerical	\$20.00		\$0.00	\$0.00 **
	Professional	\$44.00		\$0.00	
	Executive	\$75.00		\$0.00	
Coordination/ Approval/ Denial	Professional	\$44.00		\$0.00	\$0.00
	Executive	\$75.00		\$0.00	
Correspondence Preparation	Clerical	\$20.00		\$0.00	\$0.00
Computer Search	Machine				\$0.00 *
Other Activity	Clerical	\$20.00		\$0.00	\$0.00
	Professional	\$44.00		\$0.00	
<b>8. OTHER CASE COSTS</b>					
TYPE OF COST (A)	COST PER COPY (B)	TOTAL PAGES (C)	TOTAL COST (B X C) (D)		
Office Copy Reproduction	\$0.15		\$0.00 *		
Microfiche Reproduction	\$0.25		\$0.00 *		
Printed Records	\$0.02		\$0.00 *		
9. REMARKS: _____ _____					
<b>10. FOR FOI OFFICE USE ONLY</b>					
TOTAL COLLECTABLE COSTS: _____	TOTAL PROCESSING COSTS: \$0.00	TOTAL CHARGED: _____	FEES WAIVED/REDUCED: <input type="checkbox"/> TWO FREE HOURS OF SEARCH TIME <input type="checkbox"/> 100 FREE PAGES OF REPRODUCTION <input type="checkbox"/> PUBLIC/GOVERNMENT INTEREST <input type="checkbox"/> LESS THAN \$15.00 THRESHOLD <input type="checkbox"/> OTHER: _____		
SEARCH FEES PAID: _____	REVIEW FEES PAID: _____	COPY FEES PAID: _____			

### INSTRUCTIONS FOR COMPLETING THE FOIA CASE SUMMARY

1. REQUEST NUMBER - First two digits will express Calendar Year followed by dash (-) and activity request number. i.e., 1-89-001-H.
2. TYPE OF REQUEST - Mark the appropriate block to indicate initial request or appeal of a denial.
3. TYPE OF REQUESTER - Mark the appropriate block to indicate category of requester.
4. ACTIONS TAKEN - Mark the block(s) which summarizes actions taken on the request. If the action was transferred, enter the name(s) of the other DoD Component or Federal Agency to which it was sent. Referrals to other DCAA activities should not be counted for reporting purposes. See DCAAR 5410.5 for more information on each action taken.
5. EXEMPTIONS INVOKED - Mark the appropriate exemption(s) invoked to withhold records from the public. In the case of exemption (b) (3), the actual statute should also be entered (e.g., 5 USC 1917).

IDA - Initial Denial Authority - Enter the name of the IDA.

6. EXTENSIONS - Mark the appropriate block to indicate the reason for invoking a 10 day extension.
7. PROCESSING COST - For each applicable activity category, enter time expended to the nearest 15 minutes in the number of hours column (D).

SEARCH - Time spent locating from the files the requested information.

REVIEW / EXCISING - Time spent reviewing the document content and determining if the entire document must retain its classification or segments could be excised thereby permitting the remainder of the document to be declassified.

In reviewing for other than classification, FOI exemptions 2 through 9 should be considered.

COORDINATION / APPROVAL / DENIAL - Time spent coordinating the staff action with interested offices or agencies and obtaining the approval for the release or denial of the requested information.

CORRESPONDENCE PREPARATION - Time spent in preparing the necessary correspondence and forms to answer the request.

COMPUTER SEARCH - Enter exact computer processing value in the total hours column. The salary scale for the programmer / operator executing the search will be recorded as part of the computer search cost.

Multiply total hours by the computer hourly rate and enter the cost figures. Computer search will be based on direct cost only of the Central Processing Unit, input/output devices, and memory capacity of the actual computer and configuration used.

OTHER ACTIVITY - Time spent in activity other than above, such as, duplicating documents, hand carrying documents to other locations, restoring files, etc.

#### 8. OTHER CASE COSTS

OFFICE COPY REPRODUCTION - Enter the number of pages reproduced.

- Multiply by the rate per copy and enter cost figures.

MICROFICHE REPRODUCTION - Enter the number of microfiche copies reproduced.

- Multiply by the rate per copy and enter cost figures.

PRINTED RECORDS - Enter total pages in each category. The categories are:

Reports (Include any type of memorandum, staff action paper, etc.)

- Multiply the total number of pages in each category by the rate per page and enter cost figures.

#### 9. REMARKS - Self explanatory.

#### 10. FOR FOI OFFICE ONLY

TOTAL COLLECTABLE COSTS - Add the blocks in the total cost column marked with an asterisk and enter total in the total collectable cost block.

TOTAL PROCESSING COSTS - Add all blocks in the total cost column and enter total in the total processing cost block. The total processing cost in most cases will exceed the total collectable cost.

TOTAL CHARGED - Enter the total amount that the requester was charged, taking into account the fee waiver threshold and fee waiver policy.

SEARCH FEES PAID - Enter total clerical and professional search and/or computer search fees paid by the requester.

REVIEW FEES PAID - Enter total review fees paid by the requester.

COPY FEES PAID - Enter total amount paid by the requester for Office Copy reproduction/Microfiche reproduction and Printed records (e.g., Forms, Publications and/or Reports).

FEES WAIVED / REDUCED - Mark the appropriate block as applicable. Enter reason for the fee waiver reduction (e.g., Public interest).



