

FREEDOM OF INFORMATION ACT (FOIA)

Processing Guide

(Prepared by 452 CS/SCOKR-FOIA)

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WHAT IS THE FREEDOM OF INFORMATION ACT?

FOIA is the chief federal law on openness in the federal government to the public. It establishes procedures for which everyone in the whole world (except fugitives from the law) may request copies of government records. It requires Federal agencies to make available to the public, upon request, as much information as possible.

Passed in 1966; and amended several times, FOIA provides that “any person” is entitled to access agency records—generally, any record in the possession of a federal agency—UNLESS to the extent that it falls under one or more of the applicable exemptions to FOIA. The FOIA establishes the laws on how government employees comply with requests and types of information which may be withheld.

The Freedom of Information Act (5 U.S.C. § 552), as amended by The Open Government Act of 2007 (Public Law No. 110-175, 121 Stat. 2524), states that a FOIA RSC will not assess search fees if they fail to comply with the statutory time limit unless unusual or exceptional circumstances apply to the processing of the request.

Except for exemption (b)(3) [discretionary disclosure of information is prohibited by another law], disclosure of exempt information is at the discretion of the agency. On January 21, 2009, President Obama signed the "Presidential Memorandum for the Heads of Executive Departments and Agencies on the Freedom of Information Act," which establishes a new policy for Executive Branch departments and agencies concerning disclosure and transparency. The President directed all agencies to administer the FOIA with a clear presumption in favor of disclosure, to resolve doubts in favor of openness, and to not withhold information based on "speculative or abstract fears." In addition, the President called on agencies to ensure that requests are responded to with "a spirit of cooperation," that disclosures are timely, and that modern technology is used to make information available to the public even before a request is made.

WHO CAN SUBMIT A FOIA REQUEST?

- Anyone with a right to see information pertaining to government contract or operational information.
- Individuals
- Commercial entities
- Law firms/Medical Firms/Media Organizations
- Requesters do not need to be associated with the government

The FOIA Manager for March Air Reserve Base is located in the 452d Communications Squadron, SCOKR (FOIA), 1261 Graeber Street, March ARB, CA 92518

Organizational FOIA monitors, OPRs, and management of personnel who process FOIAs need to be familiar with governing FOIA regulations:

- The Freedom of Information Act (5 U.S.C. § 552)
- The Open Government Act of 2007 (Public Law No. 110-175, 121 Stat. 2524)
- DOD 5400.7-R/AF Supplement

WHAT IS “EXEMPT” FROM DISCLOSURE UNDER FOIA?

There are nine (9) exemptions covering (roughly) the following matters (DODR 5400.7/AF Sup):

- Exemption 1.** Those properly/currently classified in the interest of national defense/foreign policy.
- Exemption 2.** Those related solely to internal personnel rules and practices of the DoD or any of its components; purely internal matters (low (b)(2) or any disclosure would risk circumvention of a legal requirement (high (b)(2))
- Exemption 3.** Information specifically exempted from disclosure by statute.
- Exemption 4.** Confidential trade secrets, commercial or financial information obtained from another, chiefly that which would threaten competitive harm. Confidential commercial or financial information is that generally generated or collected by an entity for use within the entity, and does not cover such information generally generated for disclosure outside the entity, such as sales prices generated for disclosure to one or more prospective buyers.
- Exemption 5.** Those containing information considered privileged in civil litigation, primarily under the deliberative process privilege.
- Exemption 6.** 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 concerns, would result in a clearly unwarranted invasion of personal privacy.
- Exemption 7.** Certain types of records or information compiled for law enforcement purposes—i.e., civil, criminal, or military law.
- Exemption 8.** 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.** Those containing geological and geophysical information and data (including maps) concerning wells.

These exemptions are merely options to withhold and government agencies may make discretionary releases of this material, except where some other law prohibits its release. If only part of a requested record is exempt, the remainder must be furnished.

A more thorough explanation of the exemptions is contained in DODR5400.7-R/AF Sup, Chap 3.

PROCEDURES FOR A REQUESTER UNDER THE FOIA:

Every agency is required to publish regulations telling the public how to submit FOIA requests to the appropriate agency. (DODR5400.7-R/AF Sup/)

March ARB and every other government installation must maintain an “Electronic Reading Room” (ERR) that the public may access; it shows the governing regulations,

frequently request and releasable information, and the requester may submit his request through this means.

Requesters may submit their requests via:

USPS mail: 452 CS/SCOKR (FOIA)
1261 Graeber Street, Ste 25
March ARB, CA 92518

March FOIA website: <http://www.march.afrc.af.mil/>
Click on “**STAY INFORMED**”
Click on Freedom of Information

Fax: 951-655-5680

Requesters must meet certain requirements before a FOIA request from them will be accepted and processed by the Base FOIA Office:

1. Must be in writing and cite the FOIA.
2. Must describe the records requested sufficiently so the agency understands what they are requesting under FOIA. The requester does not need to identify specific records but rather may generically describe records sought by specific content or subject matter (i.e., all records applicable to John Doe or all information pertaining to the air supply systems in the C-17 aircraft)
3. Must accept all processing fees for their request.

As soon as all of these requirements are met, the FOIA is considered “PERFECTED” and will be accepted and processed.

A requester does not have to justify why they are requesting these certain records and you should not ask them their reasons for wanting these records. However, requester may volunteer such information in its request or otherwise, and such reasons may be considered with respect to those exemptions like (b)(6), which permit disclosure decisions based on interest being protected exemption against the purpose or need of the requester.

A requester is not limited to the number or scope of records they ask for, or the number of requests that they may submit.

Regarding the fees, fees may be waived based on public interest; this is a decision to be made strictly by the Base FOIA Manager. Also, if a fee total less than \$15, these fees may also be waived.

All requests **MUST** be responded to within the established 20 working days, unless processing the request involves any of the three unusual circumstances identified in FOIA, in which case, the agency is permitted to extend the time limitation by a maximum of 10 additional working days.

PROCEDURES FOR THE BASE FOIA MANAGER

The Base FOIA Manager will assure that the requirements for submission of a FOIA request have been addressed as cited above before it is accepted for processing.

All FOIA requests must come through the Base FOIA Office before they will be processed.

The request will then be assigned a FOIA case number and logged in accordingly.

The case will be assigned to the organization(s) that may have responsive records.

The Base FOIA Manager will put together a FOIA package that will state the date by which the decision authority must make a decision of which responsive records will be disclosed and withheld.. If the disclosure authority recommends denial of any information or defers decision to the initial denial authority (IDA), the disclosure authority must its decision in sufficient time for the IDA to review the records and recommendations, make a decision and return that decision to the FOIA office not later than the suspense date indicated.

The FOIA package will come with a **FOIA Cover sheet, 452 AMW (SCBR) Form 0-75**.

The package will contain specific suspense dates followed by the original copy of the request.

The final page of the package will be the DD Form 2086, FOIA Cost Sheet.

The FOIA package is then sent to the appropriate organizational FOIA monitor, who will immediately assigned to the OPR.

Weekly suspense date(s) will be sent out by this office to all FOIA suspense organizations as a reminder. If more than one organization is going to recommend denial of records, those organizations must decide which organization is recommending denial of the greatest volume of records in sufficient time for that organization to prepare the combined denial recommendations and denial package to the IDA, obtain the IDA decision by the suspense date. All other organizations recommending denial of records will cooperate with and assist the designated organization in preparing the denial package, including furnishing proposed denial language meeting the requirements of DODR 5400.7-R/AFSUP, paragraph C5.2.5.3 for the records that organization decision. DOJ requires agencies to identify and use every exemption that applies to the information withheld in the denial decision.

If the suspense is not going to be met, notify this office immediately as to why, so proper procedures can be taken to notify requesters. If the suspense cannot be met, it will be elevated to higher management to adjust resources to meet the statutory time limit suspense. If one of the three statutory unusual circumstances exist or are encountered, notify the FOIA manager immediately, identifying the nature of the unusual circumstance, and why it was necessary to respond to the FOIA request. If the FOIA manager, is satisfied a statutory unusual circumstance may prevent meeting the 20

working day time limit, the FOIA manager will grant the statutorily mandated 10 additional working days to the suspense date and ensure that the FOIA request file is properly annotated as to which of the three statutorily specified usual circumstance were encountered or required to process the request and why.

It is very important to remember that FOIA requests are to be given the utmost priority above all other duties.

PROCEDURES FOR THE ORGANIZATIONAL FOIA MONITOR (OFM)

The OFM is the primary POC for all FOIA matters for that organization.

If you or anyone within your organization receives a FOIA request direct, you should route it through the FOIA office immediately.

The OFM receives the FOIA package from the Base FOIA Manager.

The OFM will review the request to determine the appropriate OPR to work the request for those records within that organization.

The OFM will suspense the OPR to assure that the response is returned to the Base FOIA Manager's Office by the assigned suspense date as indicated on the front page of the FOIA package.

The OFM will be the POC to respond to any inquiries that the FOIA Office has concerning the FOIA(s) currently being worked by that organization.

THE OFM will review the FOIA package when it is returned to them to be sure the responsive records are attached, and that the FOIA Cost sheet is filled out. The OPR will fill out the time spent in each of the applicable search, review, and copying categories.

The OFM will track the FOIA packages from receipt to final processing and completion.

If you, as the organizational FOIA monitor, have any questions at all, do not hesitate to call this office.

It is very important to remember that OPRs are NOT to release requested documents direct to the requester. – Releasable records and decision documents MUST come back through this office for mailing to the requester. If the decision is to disclose all records, the squadron commander will annotate that decision on the OPR memorandum, with the OPR indicating his/her recommendation concerning disclosure. If the disclosure authority recommends withholding any record with the concurrence of the legal office, that recommendation will be annotated on the SJA memorandum/legal review.

PROCEDURES FOR THE OPR OF THE FOIA REQUEST

The OPR of the FOIA request will review thoroughly the FOIA request for the records, require diligent search for all responsive records in the organization and make recommendations on the release of all records located. Before reviewing responsive records, the OPR should review the exemptions as listed on page 3 and the 452 AMW FOIA website, which should provide sufficient guidance, for the OPR to make informed recommendations, with good rationales, for the recommendations. An objection to disclosure by a submitter is not sufficient rationale to deny information.

The OPR will examine whether any information in the responsive records is exempt from mandatory disclosure and consider, based on a presumption to disclose, whether there is a significant government interest that needs to be protected from disclosure based on the likelihood of harm to a legitimate government interest. The OPR cannot use speculative or abstract fears or rationales of harm to deny the requester information exempt from mandatory disclosure. **If during an initial assessment of the request, denial of the requested information must be made by the installation Staff Judge Advocate**, regarding denying disclosure of information requested through FOIA or disclosing information to which a submitter objected, or when the submitter did not respond to the submitter notification.

The OPR is not to inquire of the requester why they want these records, but the OPR may notify the current record holder of whom is requesting the information. However, if it is unclear as to what specifically is asked for, you as the OPR should email your questions to the FOIA Manager who will contact the requester for clarification.

The entire original FOIA package, along with the releasable records will be routed through the organizational monitor and back to the FOIA Office for release back to the requester.

For any records deemed to be withheld under the FOIA, they must fall under one of the exemptions cited on page 3.

If it is determined that some of the requested records are not maintained at March AFB, or we are not authorized to release them, then provide the name/address of where this request may be transferred in Block II of the AFMC Form 559 and notify the FOIA manager.

The OPR must work closely and consult with the legal office (SJA) in all situations described in the second paragraph of this section to ensure that your recommendations and rationales meet legal requirements and prior IDA decisions, or if you have substantive questions concerning the application of any exemption or any submitter objection, they are to call SJA at 655-4479.

If the OPR determines that part or all of the requested records may not be released to the requester, we will follow denial procedures outlined below.

The OPR is to give priority to any FOIA request they are assigned. They must meet the assigned suspense dates.

OTHER OPR CONCERNS:

CLARIFICATIONS AND MODIFICATIONS OF REQUESTS WILL BE REFERRED TO AND HANDLED BY THE FOIA MANAGER: OPRS are not authorized to be involved in such communication with the requester.

EXTENSIONS: If they cannot meet the suspense date, a written explanation should be forwarded to your OFM and then to the FOIA Office. If an extension is granted, the FOIA office will notify the OFM in writing of the new date.

CANCELLATIONS: If the Requester contacts the OPR and has decided to withdraw his request: Get this in writing; have the requester fax it or email it to you; attach it to the FOIA package; return it back through your OFM and they will return it to the FOIA manager.

WEB ACCESSIBLE (*ELECTRONIC READING ROOM-ERR*): If the requested records are fully releasable and available from a website, inform the FOIA Manager so they can direct the requester there.

MISC CONVERSATIONS WITH REQUESTERS, INCLUDING ANY MODIFICATION OF THE REQUEST: You should direct these to the FOIA Manager.

PROBLEMS/DELAYS: *"I have other duties to perform."*

or

"She/he was on leave/TDY—it's been sitting on the desk."

These are things the FOIA Manager hears all the time; and these **reasons for not meeting a FOIA suspense are not acceptable.**

Exemption 5 U.S.C. 552 (b)(4) (reference (a)) Processing Procedures: When the OPR has determined that the requested information falls under exemption 5 U.S.C. 552(b)(4) (reference (a)) (confidential commercial, financial, and trade secret information obtained from a non-government source,) processing procedures, they will immediately notify the FOIA Monitor, who notifies the FOIA Manager. The OPR shall draft a submitter notification letter and send to the FOIA Manager to send to the submitter of the requested information (per Executive Order 12600) that is arguably confidential commercial information and this allows them (the submitter) 10 business days to respond with their justification for non-release (if applicable); or, the submitter may state it is okay to release the information to the requester. The FOIA Office has the responsibility to notify the requester of the requirement of Exec Order 12600. When we send a Submitter Notification Letter, the time limit specified above for IDA to issue his disclosure/denial decision can be extended a maximum of an addition 10 business days.. After response from a submitter, the justification must be analyzed by the OPR and the OPR analysis be approved by SJA. Full denial or partial denial packages must be prepared and signed by the Initial Denial Authority (IDA). A submitter determination must be sent whenever we release information over the submitter's objection or when the submitter does not respond to the notification. The IDA signs the first type and the second type by the FOIA manager.

MISC FOIA PROCESSING NOTES

Creating a Record: Reference DODR 5400.7/AF Sup, –

Para C1.5.7.1. – A record must exist and be in the possession and control of the Department of Defense at the time of the search to be considered subject to this Regulation and the FOIA. There is no obligation to create, compile, or obtain a record to satisfy a FOIA request. A DoD Component, however, may compile a new record when so doing would result in a more useful response to the requester, or be less burdensome to the agency than providing existing records, and the requester does not object. Cost of creating or compiling such a record may not be charged to the requester unless the fee for creating the record is equal to or less than the fee which would be charged for providing the existing record. Fee assessments shall be in accordance with Chapter 6.

Para C1.5.7.2. About electronic data, the issue of whether records are actually created or merely extracted 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 are questionable, Components 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. However, the request need not be processed where the capability to respond does not exist without a significant expenditure of resources, thus not being a normal business as usual approach. As used in this sense, a significant expenditure of resources in both time and manpower, that would cause a significant interference with the operation of the Components' automated information system would not be a business as usual approach.

PROCEDURES FOR THE OPR -- REQUEST MAY BE DENIED OR PARTIALLY DENIED

The OPR may recommend that part or all of the request cannot be released.

The OPR should notify the FOIA monitor, who in turn, will notify the FOIA manager as quickly as it is known.

The OPR should review the FOIA exemptions and the 452 AMW FOIA website to determine which may be applicable to any information responsive to the request. There may be more than one exemption applicable. The Department of Justice requires the agency denial decision to cite all applicable exemptions applicable to the information that the agency plans to withhold.

The OPR should review the 452 AMW FOIA Website, which can be found at:

- March Homepage
- HQ AFRC Assigned units
- Staff Judge Advocate
- Handouts
- Training Material

The OPR should then call FOIA Manager (951) 655-5952 to discuss. You should be prepared to justify the reasons for denial, partial denial, and/or release over objection.

If they agree, you will be advised to prepare a “DENIAL, PARTIAL DENIAL and/or RELEASE OVER OBJECTION PACKAGE” for the request. (Or if they do not agree, you may be required to re-accomplish your analysis again.)

Prior to submitting the OPR and disclosure authority recommendations and draft decisions formally through the Staff Summary Sheet coordination process, you should informally (by email) submit drafts of the requester decision, submitter determination and Rationale for Decision to FOIA Manager in the manner and format SJA requires (obtain from FOIA Manager) to review your drafts. SJA will render a written opinion (formal or e-mail) to agree or disagree with your recommendations and rationales as stated in the draft decision documents and provide any additional guidance to assure agreement prior to beginning the formal coordination process.

The package you put together will be determined by the following, whichever applies:

If the OPR decides not to deny any information and the Submitter doesn't object there is a total release. The FOIA Manger will sign the Submitter Determination Letter

If the OPR wants to deny or the Submitter objects and the OPR agrees with the objections, a Denial Letter (signed by the IDA) will be sent to the Requester. There will be no Submitter Determination Letter.

If the OPR agrees to deny part of the Submitter's objections but not all, a Partial Denial Letter (signed by the IDA) is sent to the Requester and Submitter Determination Letter (signed by the IDA and addressing why objected to information will be disclosed) with Rational for Decision (RFD) attached sent to the Submitter.

If we don't want to deny anything that the Submitter objected to, we will send a Submitter Determination Letter (signed by the IDA and addressing why objected to information will be disclosed) with RFD attached.

The OPR must have a copy of the records involved AND will highlight the portion(s) that are to be denied and will notate the exemption/s for each page/portion that is to be withheld for the IDA review.

The FOIA statute allows for only certain positions to be able to deny any information to a requester or to disclose records over objection—this position is called an INITIAL DENIAL AUTHORITY (IDA).

The IDA is located in the 452 Office of Staff Judge Advocate Section, Bldg 115. These are the only positions that will be able to sign off on the denial package.

PROCESSING THE DENIAL, PARTIAL DENIAL, AND/OR RELEASE OVER OBJECTION

At this point in time, you (the OPR) and the SJA have coordinated on a course of action and agreed on the exemptions and justification.

You have concurred on the denial in part, or whole, of some of the information.

Therefore, to completely assemble your denial package, you will need the records concerned with the denied sections highlighted in yellow; and, ALSO, a copy with the highlighted portion excised out, which will be the copy to be released to the requester.

(Please note that you cannot use a sharpie to redact, you must either cut out or use correction tape and then make a copy of that copy.)

You will need to prepare a Denial, Partial Denial and/or Release Over Objection Package, and this will consist of the following:

- TAB 1: Denial Letter to the Requester

or

- TAB 1A: Partial Denial Letter to the Requester
- TAB 1B: Submitter Determination Letter with RFD
- TAB 2: Original Request
- TAB 3: SJA Opinion or concurrence(email or letter opinion)
- TAB 4: Records to be Released (this is the excised copy)
- TAB 5: Records being Denied (the highlighted copy)
- TAB 6: Other documentation as required

It is also now required by the Command that your letters, SSSs, etc, be maintained on a cd included in the package for ease and time in getting any corrections made.

It is also recommended by this office that you hand carry your package through as many points as possible.

You must stick a note on the front of the package for CCX to notify you @ extension xxxxxxxx after signature to pick up.

After you have picked up your completed FOIA denial, partial denial, and/or release over objection package, you will notify your OFM that the package is completed. You must make copies of your completed FOIA Package and retain with the contract.

HOWEVER, ALL ORIGINAL MATERIALS ARE TO BE KEPT IN THE FOIA PACKAGE AND THEN DELIVERED TO THIS OFFICE FOR THE FINAL PROCESSING TO THE REQUESTER. The decision documents can only be mailed by the FOIA Manager. Ensure that the package returned to the FOIA includes records of all communications with submitters/requesters. (Note all of these communications should be accomplished by the FOIA manager, who will provide originals/copies to the OPR to be kept as part of the FOIA package.)

You have now completed the processing of your FOIA denial, partial denial and/or release over objection.

It must be delivered back to the Base FOIA Office through your OPM as quickly as possible for final processing.

FOIA GOVERNING REGULATIONS

DODR 5400.7/AF Sup - Department Of Defense Freedom of Information Act Program
(24 June 2002)

The Freedom of Information Act (5 U.S.C. § 552), as amended by The Open Government Act of 2007 (Public Law No. 110-175, 121 Stat. 2524)

United States Code (U.S.C.), Title 5, Part I, Chapter 5, Sub-Chapter II, Section 552,
Freedom of Information Act

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