Ref: FOIA-2013-00479

OCCL

Mr. Allan Blutstein
Cause of Action
1919 Pennsylvania Avenue, NW
Suite 650
Washington, DC 20006

Dear Mr. Blutstein:

This is the final response to your Freedom of Information Act (FOIA) request dated May 30, 2013, for the Department of Defense, Office of Inspector General response to the August 23, 2010, letter from Senator Grassley and Representative Issa concerning the review of FOIA request responses by political appointees. We received your request on June 4, 2013, and assigned it FOIA case number FOIA-2013-00479.

The enclosed documents are responsive to your request. I determined that the redacted portions are exempt from release pursuant to 5 U.S.C. § 552(b)(6), which pertains to information, the release of which would constitute a clearly unwarranted invasion of personal privacy.

If you are not satisfied with this action, you may submit an administrative appeal to the Department of Defense, Office of Inspector General, Office of Communications and Congressional Liaison, ATTN: FOIA Appellate Authority, Suite 17F18, 4800 Mark Center Drive, Alexandria, VA 22350-1500. Your appeal should be postmarked within 60 days of the date of this letter, should cite to case number FOIA-2013-00479, and should be clearly marked “Freedom of Information Act Appeal.”

Sincerely,

Jeanne Miller
Chief, Freedom of Information and Privacy Office

Enclosure(s):
As stated
The Honorable Charles E. Grassley  
Ranking Member  
Committee on Finance  
United States Senate  
Washington, DC 20510-6200

Dear Senator Grassley:

This is in response to a letter dated August 23, 2010, signed by you and Representative Darrell Issa, Ranking Member of the House Committee on Oversight and Government Reform, expressing concerns about political appointees “impeding Freedom of Information Act (FOIA) requests by creating a new layer of political review.” The letter requests “an inquiry into the agency’s Defense FOIA office to determine whether, and if so, the extent to which political appointees are made aware of information requests and have a role in request reviews or decision making.”

The FOIA program in DoD is decentralized, and no single office is responsible for providing DoD records and information. The DoD Freedom of Information Policy Office (DFOIPO) is responsible for the formulation and implementation of FOIA policy for the DoD, but does not receive individual FOIA requests. Requests are sent directly to the individual DoD Component Requester Service Centers, which respond to requests for records.

The DFOIPO has provided the Requester Service Centers a policy document (Enclosure 1) concerning the departmental level notifications of significant FOIA requests and responses that have departmental level interest. In addition, on July 30, 2010, the Assistant Secretary of Defense for Legislative Affairs and the Director of Administration and Management issued a memorandum regarding requests for records from Members of Congress (Enclosure 2). Furthermore, a copy of the DoD Freedom of Information Handbook is provided as Enclosure 3 for your information.

Should you have any questions regarding this matter, please contact me at (703) 604-8324.

Sincerely,

John R. Crane  
Assistant Inspector General  
Communications and Congressional Liaison

Enclosures: as stated

cc: the Honorable Max Baucus, Chairman
The Honorable Darrell Issa  
Ranking Member  
Committee on Oversight and Government Reform  
U.S. House of Representatives  
Washington, DC 20515  

Dear Representative Issa:

This is in response to a letter dated August 23, 2010, signed by you and Senator Charles Grassley, Ranking Member of the Senate Committee on Finance, expressing concerns about political appointees “impeding Freedom of Information Act (FOIA) requests by creating a new layer of political review.” The letter requests “an inquiry into the agency’s Defense FOIA office to determine whether, and if so, the extent to which political appointees are made aware of information requests and have a role in request reviews or decision making.”

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Sincerely,

[Signature]

John R. Crane  
Assistant Inspector General  
Communications and Congressional Liaison

Enclosures: as stated

cc: the Honorable Edolphus Towns, Chairman
Departmental Level Notification Process For Significant DoD FOIA Requests and Responses

**Significant FOIA Requests**

- Components will send to DFOIPO (dfoipo@whs.mil) copies of significant FOIA requests and a short summary for each significant request. The subject of the email should be “Significant FOIA Request.”

- A “significant” FOIA request is one where, in the Component’s judgment, the subject matter of the released documents may generate media interest and/or may be of interest or potential interest to DoD senior leadership. Any requests involving the current administration (including requests for information on Senator Obama), previous administrations, or current or previous DoD leadership would be included. Requests involving Members of Congress should also be considered.

- If the request generates departmental level interest (DLI), the Component FOIA Office will be advised by DFOIPO. Components should assume that ALL FOIA requests that are White House or Congressionally related, such as requests for Congressional correspondence, correspondence logs, or travel, have DLI. The Component FOIA Office should advise its own chain of command of the departmental interest. The Component must also provide DFOIPO a weekly update on the processing of the request by Friday of each week on the requests that have departmental level interest.

**Significant FOIA Responses**

- About a week before a FOIA response is made on a request with DLI, the Components will send DFOIPO a short summary of the response containing as a minimum the name/organization of the requester, a summary of the information being released, and the estimated date of release. The responsive documents in their releasable form will be attached to the email. If the documents are too large to email, the Component should make arrangements with DFOIPO on transferring the documents via IntelDocs. The email should be sent to dfoipo@whs.mil, and the subject should be “Significant FOIA Response.”

- These responses will include initial requests, appeals, and litigation. Additionally, it’s not necessary for a Component to be releasing any documents for a response to qualify as “significant.” A no record, Glomar (neither confirm nor deny), or a complete denial may qualify as “significant.”

- If a Component FOIA Office has a significant FOIA response and they did not previously advise DFOIPO of the FOIA request, the process for advising DFOIPO of the response, two paragraphs above, should still be followed.

- If the significant FOIA response is White House or Congressionally related, then the Component FOIA Office will not respond to the requester until DFOIPO clears the documents for release. For all other responses, if the Component does not hear from
DFOIPO on whether the documents are cleared for release by the planned release date, they will contact DFOIPO for guidance on when they can be released.

Weekly Updates

- DFOIPO will keep the Director of Administration and Management informed each week of the status of significant FOIA requests and responses. DFOIPO will provide a copy of this weekly update to the DoD FOIA Public Liaisons every Tuesday.
MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
UNDER SECRETARIES OF DEFENSE
DEPUTY CHIEF MANAGEMENT OFFICER
ASSISTANT SECRETARIES OF DEFENSE
GENERAL COUNSEL OF THE DEPARTMENT OF
DEFENSE
DIRECTOR, OPERATIONAL TEST AND EVALUATION
DIRECTOR, COST ASSESSMENT AND PROGRAM
EVALUATION
INSPECTOR GENERAL OF THE DEPARTMENT OF
DEFENSE
ASSISTANTS TO THE SECRETARY OF DEFENSE
DIRECTOR, ADMINISTRATION AND MANAGEMENT
DIRECTOR, NET ASSESSMENT
DIRECTORS OF THE DEFENSE AGENCIES
DIRECTORS OF THE DOD FIELD ACTIVITIES

SUBJECT: Requests for Records from Members of Congress

Department of Defense (DoD) Components frequently receive requests for DoD records from Members of Congress. It is the policy of the DoD to provide the maximum amount of information to Members for such requests. The type of information requested and how it is being requested determine how these information requests are processed, and what information is released. This memorandum provides updated guidance on the process for release of records to Members of Congress.

Written requests for DoD records (whether in paper or electronic form) submitted by Members of Congress on behalf of a Congressional Committee or Subcommittee, or on behalf of the House of Representatives or the Senate sitting as a whole, shall be processed in accordance with DoD Instruction 5400.04, “Provision of Information to Congress.” In order to qualify under this provision, the committee must be a standing committee as established by Senate Rule XXV or House Rule X. The Freedom of Information Act (FOIA) (5 U.S.C. § 552) and its exemptions do not apply in such cases, nor are such requests processed through regular FOIA channels.

Written requests for DoD records from Members of Congress who are not requesting on behalf of a Congressional committee or subcommittee, nor on behalf of the House of Representatives or the Senate sitting as a whole, shall be complied with without
delay provided that any information exempt from public release by one or more of the FOIA exemptions is removed from the requested records prior to release.

Alternatively, if Member-requested records are not publicly releasable, then whenever practicable a publicly releasable summary of the requested information shall be provided to the Member as expeditiously as possible.

Member requests normally should not be processed through regular FOIA channels; however, any release of information will be consistent with a release to any individual under the FOIA and its withholding exemptions. In these cases, the Member will not be provided with FOIA appeal rights. The determination of what information is releasable should be made by the originator of the information. Component legal counsel, security officers, and FOIA staff in coordination with the Office of the Assistant Secretary of Defense, Legislative Affairs (OASD(LA)), can provide guidance when making this determination.

If a Member of Congress chooses to request DoD records under the FOIA, then the provisions of DoD 5400.7-R, “Department of Defense Freedom of Information Act Program,” apply.

Constituent requests for DoD records that are forwarded by individual Members of Congress shall be processed through regular FOIA channels, or through Privacy Act (5 U.S.C. § 552a) channels if applicable. The Member forwarding the request will be advised of these circumstances.

Finally, the OASD(LA) shall be notified of every instance when a Member of Congress objects that the Department of Defense has not responded to a Congressional request for information in the form it was originally requested, whether that request is made by an individual Member or a Congressional Committee.

The points of contact for this are Dr. Charles Smith, OASD(LA), (703) 692- and Jim Hogan, Defense Freedom of Information Policy Office, (703) 696-4689.

Elizabeth L. King
Assistant Secretary of Defense for Legislative Affairs

Michael L. Rhodes
Director of Administration and Management
“A popular Government without popular information or the means of acquiring it, is but a Prologue to a Farce or a Tragedy or perhaps both. Knowledge will forever govern ignorance, and a people who mean to be their own Governors, must arm themselves with the power knowledge gives.”

James Madison

Introduction

This handbook is intended to assist you in making Freedom of Information Act (FOIA) requests for Department of Defense (DoD) records. It will get you started and provide you with a brief description of your rights and the manner in which DoD will respond to your requests. The information contained herein is not intended to be definitive or exhaustive.

The FOIA, which is known by its legal cite as 5 U.S.C. § 552, along with the DoD Regulation, governs how requests will be processed within the DoD. DoD Regulation 5400.7-R, “Department of Defense Freedom of Information Act Program,” can be found at Part 286 of Chapter 32 of the Code of Federal Regulations, which is available in most libraries. It can also be found on the World Wide Web by entering:

(http://www.dtic.mil/whs/directives/corres/pdf/540007r.pdf)

Due to its size and complexity, the Department of Defense’s FOIA program is decentralized among the several “DoD components,” which operate their own FOIA offices and respond directly to the public for their own records. If you desire records from these components, please write to them directly.

Frequently Asked Questions

What is the FOIA?

The FOIA is a Federal law that establishes the public’s right to request existing records from Federal government agencies.

Who can file a FOIA request?

Any “person” can file a FOIA request, including U.S. citizens, foreign nationals, organizations, universities, businesses, and state
and local governments. As an exception, DoD components which are
part of the intelligence community are precluded from releasing
records responsive to requests made by any foreign government or
international government organization.

Who is subject to the FOIA and what type of information can be
requested?

The FOIA's scope includes Federal Executive Branch Departments,
agencies, and offices; Federal regulatory agencies, and Federal
corporations. Congress, the Federal Courts, and parts of the
Executive Office of the President are not subject to the FOIA. State
and local governments are likewise not subject to the Federal FOIA,
but some states have their own equivalent access laws for state
records. At the Office of the Secretary of Defense/Chairman of the
Joint Chiefs of Staff level, you may expect to find policy, planning
and budgetary information for the DoD.

What is a record?

A record is the product(s) of data compilation, such as all books,
papers, maps, and photographs, machine readable materials, inclusive
of those in electronic form or format, 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
Department of Defense possession and control at the time the FOIA
request is made.

Can I ask questions under the FOIA?

The FOIA does not require Federal Agencies to answer questions,
render opinions, or provide subjective evaluations. Requesters must
ask for existing records, such as those mentioned above.

How do I file a FOIA request?

• Label your request "Freedom of Information Act Request,"
preferably within the request letter and on the envelope, and
address the request to the DoD Component(s) likely to have the
information you seek. If you do not know which Component is
likely to maintain the information you seek, you may call the
Office of Freedom of Information at (703) 696-4689, or write to us
at the address below (first address under "DoD Components") for
assistance.

• Most DoD components accept e-mail requests. A list of DoD
component web pages may be found at:

(http://www.dod.mil/pubs/foi/dfoipo/ see DoD Service Centers)
• State your willingness to pay applicable fees. If you seek a fee waiver, provide a justification for such a waiver.

• Describe the specific records you are requesting in enough detail so that they can be located with a reasonable amount of effort. Generally, a record is reasonably described when the description contains sufficient file-related information (type of document, title, subject area, date of creation, originator, etc.); or the request contains enough event-related information (date and circumstances surrounding the event the record covers) to permit the conduct of an organized, non-random search.

**Note:** A sample request letter can be found at the end of this handbook.

**Can I ask for expedited processing?**

The requester must demonstrate one of the following compelling needs:

• Failure to obtain the records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual.

• Information is urgently needed by an individual primarily engaged in disseminating information in order to inform the public concerning actual or alleged federal government activity.

• Another reason that merits expedited processing is an imminent loss of substantial due process rights.

**What are the reasons for not releasing a record?**

An office may not release a record when a request for the record is made under the FOIA. They are:

• A reasonable search of files failed to identify responsive records.

• The request is transferred to another DoD Component, or to another Federal Agency.

• The request is withdrawn by the requester.

• The requester is unwilling to pay fees associated with a request; the requester is past due in the payment of fees from a previous FOIA request; or the requester disagrees with the fee estimate.

• A record has not been described with sufficient particularity to enable the DoD Component to locate it by conducting a reasonable search.
• The requester has failed unreasonably to comply with procedural requirements, other than fee-related, imposed by this Regulation or DoD Component supplementing regulations.

• The information requested is not a record within the meaning of the FOIA and this Regulation.

• The request is a duplicate request (e.g., a requester asks for the same information more than once). This includes identical requests received via different means (e.g., electronic mail, facsimile, mail, courier) at the same or different times.

• Any other reason a requester does not comply with published rules other than those outlined above.

• The record is denied in whole or in part in accordance with procedures set forth in the FOIA.

What are the FOIA exemptions?

Records (or portions of records) will be disclosed unless that disclosure harms an interest protected by a FOIA exemption. The nine FOIA exemptions are cited in the Act as 5 U.S.C. § 552(b)(1) through (b)(9):

• (b)(1)—records currently and properly classified in the interest of national security;

• (b)(2)—records related solely to internal personnel rules and practices. There are two profiles, LOW and HIGH;

LOW - 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;

HIGH - 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;

• (b)(3)—records protected by another law that specifically exempts the information from public release;
• (b)(4)—trade secrets and commercial or financial information obtained from a private source which would cause substantial competitive harm to the source if disclosed;

• (b)(5)—internal records that are deliberative in nature and are part of the decision making process that contain opinions and recommendations;

• (b)(6)—records which if released, would result in a clearly unwarranted invasion of personal privacy;

• (b)(7)—investigatory records or information compiled for law enforcement purposes;

• (b)(8)—records for the use of any agency responsible for the regulation or supervision of financial institutions; and

• (b)(9)—records containing geological and geophysical information (including maps) concerning wells.

**Can I appeal a denial?**

Yes. If your request is initially denied in whole or in part under one or more of the above exemptions or denied for some other reason, you will be advised of your appeal rights and the proper procedures for submitting the appeal within 60 days.

**How long will it take for my request to be processed?**

This is a difficult question to answer because of the size of DoD and its worldwide locations. In fairness to all requesters, DoD processes requests in order by date of receipt and according to their complexity. These are called easy and hard queuing tracks. Whenever possible, an initial determination to release or deny a record is made within 20 working days after receipt of the request by the official who is designated to respond. However, due to the thousands of requests received annually, the DoD is unable to answer all of them within the statute’s time requirements. Therefore, requests will have to wait their turn in the Components’ queuing tracks.

Under certain conditions, expedited access may be granted if there is a compelling need, such as a threat to life and safety, if a person engaged in disseminating information has an urgency to inform the public on actual or alleged Federal Government activity, an imminent loss of substantial due process rights, or a humanitarian need.
Do I have to pay for a FOIA request?

The FOIA allows fees to be charged to certain types of requesters, but it also provides that waivers or reductions in fees be given if disclosing the information is in the public interest. Public interest is defined as information which significantly enhances the public's knowledge of the operations and activities of the DoD. The FOIA requires that requesters be placed into one of the below categories:

Commercial. Requesters who seek information for a use or purpose that furthers their commercial, trade, or profit interest are considered commercial requesters. Commercial requesters pay all fees for search, review and duplication.

Educational. Institutions of education, including preschools, elementary or secondary schools and institutions of higher learning, qualify as educational institutions. The records must be sought in furtherance of scholarly research. Educational requesters pay only duplication fees, unless it is determined that fees are waived or reduced in the public interest. The first 100 pages are provided at no cost. (Note: Students are not considered Educational Use requesters).

Non-Commercial Scientific. A non-commercial scientific institution is operated solely for conducting scientific research. The records must be sought in furtherance of scientific research. Like educational requesters, these requesters pay only duplication fees, unless it is determined that fees are waived or reduced in the public interest. The first 100 pages are provided at no cost.

News Media. A representative of the news media is a person actively gathering news for an entity organized and operated to publish or broadcast news to the public. News media pay only duplication fees, unless it is determined that fees are waived or reduced in the public interest. Again, the first 100 pages are provided at no cost.

"Other" Requesters. Requesters who do not qualify in another category are considered "other" requesters, and normally make requests for agency records for their personal use. "Other" requesters receive two hours search, all review costs, and the first 100 pages at no cost.

All requesters should submit a willingness to pay fees regardless of the fee category, however, this does not mean you will be charged fees. Except for commercial requesters, waivers are always considered. Fee waivers may be granted when disclosure of the records is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government. The following factors are weighed in making a fee waiver determination:

- The subject of the request.
The informative value of the information to be disclosed.
- The contribution to an understanding of the subject by the general public likely to result from the disclosure.
- The significance of the contribution to public understanding.
- Disclosure of the information is not primarily in the commercial interest of the requester.
- The ability of the requester to disseminate the information.

DoD Components

Office of Freedom of Information  
1155 Defense Pentagon  
Washington, DC 20301-1155

Department of the Army  
FOIA/Privacy Acts Division  
ATTN: AHRC-PDD-FP  
7701 Telegraph Road  
Alexandria, VA 22315-3860

Department of the Navy  
Chief of Naval Operations  
DNS-36  
2000 Navy Pentagon  
Washington, DC 20350-2000

Department of the Air Force  
HAF/ICIOD(FOIA)  
1000 Air Force Pentagon  
Washington, DC 20330-1000

Commandant of the Marine Corps (ARSE)  
Headquarters U.S. Marine Corps  
2 Navy Annex  
Washington, DC 20380-1775

Defense Contract Audit Agency  
ATTN: CMR  
8725 John J. Kingman Road,  
Suite 2135  
Fort Belvoir, VA 22060-6219

Defense Finance & Accounting Service  
DFAS-HAC/DE  
Corporate Communications  
6760 East Irvington Place  
Denver, CO 80279-8000

Defense Intelligence Agency  
ATTN: DAN-1A Rm E4-234  
Washington, DC 20340-5100
Defense Security Service
Office of FOIA & Privacy, V0020
1340 Braddock Place
Alexandria, VA 22314-1651

Defense Information Systems Agency
Regulatory/General Counsel
ATTN: FOIA
701 South Courthouse Road
Arlington, VA 22204-2199

Defense Logistics Agency
ATTN: DP-FOIA
8725 John J. Kingman Road
STOP 2533
Ft Belvoir, VA 22060-6221

Defense Threat Reduction Agency
COSMI FOI/Privacy Office
8725 John J. Kingman Road
Ft Belvoir, VA 22060-6201

Defense Contract Management Agency
ATTN: DCMA-DSA
6350 Walker Lane #300
Alexandria, VA 22310-3226

Inspector General of the Department of Defense
Chief, FOIA/PA Office
400 Army Navy Drive, Rm 201
Arlington, VA 22202-4704

National Geospatial-Intelligence Agency
General Counsel’s Office, GCP
Mail Stop D-10
4600 Sangamore Road
Bethesda, MD 20816-5003

National Guard Bureau
Attn: NGB-SDA (FOIA)
1411 Jefferson Davis Highway
Arlington, VA 22202-3231

National Reconnaissance Office
Information Access & Release Center
ATTN: FOIA Officer
14675 Lee Road
Chantilly, VA 20151-1715
National Security Agency/Central Security Service
FOIA/PA Services
DC34
9800 Savage Road, STE 6248
Ft. George G. Meade, MD 20755-6248

Combatant Commands

U.S. Joint Forces Command
Code J024
ATTN: FOIA Officer
1562 Mitscher Ave, Ste 200
Norfolk, VA 23551-2488

U.S. European Command (HQ USEUCOM)
ATTN: ECJ1-AR (FOIA)
Unit 30400
APO, AE 09131

U.S. Southern Command
SCJ1-A (FOIA)
3511 NW, 91st Avenue
Miami, FL 33172-1217

U.S. Pacific Command
J141 FOIA
Box 64028
Camp H.M. Smith, HI 96861-4028

U.S. Special Operations Command
SOCS-SJS-I/FOIA Service Center
7701 Tampa Point Boulevard
MacDill AFB, FL 33621-5323

U.S. Central Command
CCJ6-DM (FOIA)
7115 South Boundary Blvd
MacDill AFB, FL 33621-5510

U.S. Northern Command
USNORTHCOM FOIA Officer
250 Vandenberg Street, Suite B016
Peterson Air Force Base, CO 80914

U.S. Transportation Command
ATTN: TCCS-IM
508 Scott Drive, Bldg 1961
Scott AFB, IL 62225-5357

U.S. Strategic Command
ATTN: J006 (FOIA)
901 SAC Blvd, STE 2E20
Offutt AFB, NE 68113-6000
Reading Rooms

Each component operates its own Reading Room. For access procedures, please contact the component for which you are interested.

Electronic Access


Conclusion

We trust this information will be helpful to you when pursuing FOIA requests with DoD. If you have any suggestions, you may call (703) 696-4689 and ask for a FOIA officer.
Sample FOIA Request Letter

FOIA Requester Service Center [or FOIA Officer]
DoD Component
Address
City, State, Zip Code

Dear :

This is a request under the Freedom of Information Act (5 U.S.C. § 552).

I request that a copy of the following document(s) be provided to me: [identify the documents as specifically as possible].

In order to help you determine my status for the purpose of assessing fees, you should know that I am [insert one of the descriptions below]

a representative of the news media affiliated with the _____ newspaper (magazine, television station, etc.), and this request is made as part of news gathering and not for a commercial use.

affiliated with an educational or noncommercial scientific institution, and this request is made for a scholarly or scientific purpose and not for a commercial use.

affiliated with a private business and am seeking information for use in the company’s business.

an individual seeking information for personal use and not for a commercial use.

I am willing to pay fees for this request up to a maximum of $___. If you estimate that the fees will exceed this limit, please inform me first.

I also include a telephone number at which I can be contacted if necessary to discuss any aspect of my request.

Sincerely,

Name
Address
City, State, Zip Code
Telephone number