



DoD DIRECTIVE 5400.07

DoD FREEDOM OF INFORMATION ACT (FOIA) PROGRAM

Originating Component: Office of the Chief Management Officer of the Department of Defense

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Approved by: David L. Norquist, Performing the Duties of Deputy Secretary of Defense

Purpose: This issuance establishes policy and assigns responsibilities for the DoD FOIA Program in accordance with Section 552 of Title 5, United States Code (U.S.C.), as amended, also known and referred to in this issuance as "the Freedom of Information Act (FOIA)".

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SECTION 1: GENERAL ISSUANCE INFORMATION

1.1. APPLICABILITY. This directive applies to OSD, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the DoD.

1.2. POLICY. The DoD FOIA Program:

a. While remaining consistent with the DoD's responsibility to protect national security and other sensitive information, promotes transparency and accountability by:

(1) Adopting a presumption in favor of disclosure in all release decisions involving the FOIA.

(2) Responding promptly to FOIA requests in a spirit of cooperation.

b. In accordance with the procedures established by Part 286 of Title 32, Code of Federal Regulations and DoD Manual 5400.07, provides DoD records requested by members of the public, unless those records are exempt from disclosure in accordance with Section (b) of the FOIA.

c. Works with the Office of Government Information Services to resolve disputes between FOIA requesters and the DoD.

d. Nothing in this directive will be construed to infringe on the Office of the Inspector General of the Department of Defense statutory independence and authority pursuant to the Inspector General Act of 1978, as amended, Title 5, U.S.C., Appendix.

1.3. INFORMATION COLLECTIONS. The DoD FOIA Annual Report, referred to in Paragraph 2.1.c., has been assigned report control symbol DD-DCMO(A)1365 in accordance with the procedures in Volume 1 of DoD Manual 8910.01.

SECTION 2: RESPONSIBILITIES

2.1. CHIEF MANAGEMENT OFFICER OF THE DEPARTMENT OF DEFENSE (CMO). The CMO:

- a. Serves as the DoD Chief FOIA Officer in accordance with Sections (j) and (k) of the FOIA.
- b. Directs and oversees the DoD FOIA Program to ensure compliance with the policies and procedures that govern the program.
- c. Submits the DoD FOIA Annual Report and other reports as required by Section (e) of the FOIA to the Attorney General of the United States.
- d. Exempts DoD critical infrastructure security information from release under the FOIA pursuant to Section 130e of Title 10, U.S.C.
- e. Exempts information contained in any data file of the military flight operations quality assurance system of a military department from release under the FOIA pursuant to Section 2254a of Title 10, U.S.C.

2.2. DIRECTOR, DIRECTORATE FOR OVERSIGHT AND COMPLIANCE (DO&C). Under the authority, direction, and control of the CMO, the Director, DO&C:

- a. Assists the CMO in carrying out the responsibilities of the DoD Chief FOIA Officer.
- b. Serves as the FOIA appellate authority for OSD, the Office of the Chairman of the Joint Chiefs of Staff, the DoD Field Activities, and the Combatant Commands.
- c. Appoints the official who serves as the FOIA public liaison for OSD, the Office of the Chairman of the Joint Chiefs of Staff, the DoD Field Activities, and the Combatant Commands.
- d. Provides FOIA training opportunities for the DoD to include regularly held training workshops.

2.3. DIRECTOR, WASHINGTON HEADQUARTERS SERVICES. Under the authority, direction, and control of the CMO, the Director, Washington Headquarters Services, administers the FOIA Program for OSD, the Office of the Chairman of the Joint Chiefs of Staff, and DoD Field Activities.

2.4. GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE. The General Counsel of the Department of Defense:

- a. Ensures that affected OSD legal advisors, public affairs officers, and legislative affairs officers are aware of releases through litigation channels that may be of significant public, media, or congressional interest or of interest to senior DoD officials.
- b. Establishes centralized processing of FOIA litigation documents when deemed necessary.
- c. Provides legal advice on FOIA compliance.

2.5. DOD FOIA PROGRAM COMPONENT HEADS. The DoD FOIA Program Component heads:

- a. Administer the DoD FOIA Program within their component, to include publishing any additional guidance necessary for the implementation of this directive.
- b. When dealing with FOIA releases that may be of significant public, media, or congressional interest or of interest to senior DoD officials, will ensure their FOIA Requester Service Centers:
 - (1) Provide advance notification to respective chains of command, legal counsel, public affairs officers, and legislative affairs officers of these releases, including releases through litigation channels.
 - (2) Provide DO&C with advance notification of proposed responses after coordination with their legal counsel. This paragraph does not apply to the Inspector General of the Department of Defense.
- c. Conduct training on the provisions of the FOIA, Part 286 of Title 32, Code of Federal Regulations, and DoD Manual 5400.07 for component personnel.

2.6. DOD FOIA PROGRAM COMPONENT HEADS EXCEPT FOR THE COMBATANT COMMANDERS. The DoD FOIA Program Component heads, except for the Combatant Commanders, serve as, or appoint another component official as, the component FOIA appellate authority.

GLOSSARY

G.1. ACRONYMS.

CMO	Chief Management Officer of the Department of Defense
DO&C	Directorate for Oversight and Compliance
FOIA	Freedom of Information Act
U.S.C.	United States Code

G.2. DEFINITIONS. Unless otherwise noted, these terms and their definitions are for the purpose of this issuance.

DoD FOIA Program Component. Listed in Paragraphs 3.2.a. and 3.2.b. of DoD Manual 5400.07.

REFERENCES

Code of Federal Regulations, Title 32, Part 286

DoD Manual 5400.07, “DoD Freedom of Information Act (FOIA) Program,” January 25, 2017

DoD Manual 8910.01, Volume 1, “DoD Information Collections Manual: Procedures for DoD Internal Information Collections,” June 30, 2014, as amended

United States Code, Title 5

United States Code, Title 10