

§ 286h.4

32 CFR Ch. I (7-1-98 Edition)

(6) *Documents that disclose the Government's negotiating position.* Documents that would disclose the government's negotiating position (such as pre-negotiation business clearances and positions and government cost estimates) or would adversely impact the government negotiating strategy shall not be released.

(7) *Drafts and working papers.* Drafts and working papers that would otherwise be releasable under paragraph 286h.3(a) shall not be released where their release would inhibit the development of agency positions, jeopardize the free exchange of information that is part of the deliberative process, or compromise the decision-making process.

(c) *Freedom of Information Act.* Where a request for information, the release of which is restricted under paragraph 286h.3(b) is made under the Freedom of Information Act, the request shall be forwarded to the appropriate official for disposition in accordance with DoD 5400.7-R.⁴ Requests for contractor bid or proposal information pursuant to the Freedom of Information Act shall be subject to subparagraph 5-207 a. of DoD 5400.7-R, which requires notice to a non-United States Government source of a record.

§ 286h.4 Responsibilities.

(a) The Under Secretary of Defense (Acquisition) shall be responsible for establishing uniform policies and procedures for the release of acquisition-related information.

(b) The Under Secretary of Defense (Policy), Assistant Secretary of Defense (Program Analysis and Evaluation) and Comptroller, DoD are responsible for adjudicating requests for access to Planning, Programming and Budgeting information pertaining to their respective phases of the PPB system.

(c) The Head of each DoD Component shall assure that procedures for the release of acquisition-related information are consistent with the policy contained in this Directive and shall not impose any additional restrictions on release of such information. These procedures shall specifically identify the

⁴See footnote 1 to § 286h.3(b)(2)(ii).

individuals authorized to release and transmit acquisition-related information.

PART 287—DEFENSE INFORMATION SYSTEMS AGENCY (DISA) FREEDOM OF INFORMATION ACT PROGRAM

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AUTHORITY: 5 U.S.C. 552.

SOURCE: 57 FR 61324, Dec. 24, 1992, unless otherwise noted.

§ 287.1 Purpose.

This part delineates responsibility for making available to the public the maximum amount of information concerning the operations and activities of the Defense Information Systems Agency (DISA) and the Office of the Manager, National Communications System (OMNCS).

§ 287.2 Applicability.

This part applies to Headquarters, DISA/OMNCS, and DISA field activities in the Metropolitan Washington area.

§ 287.3 Authority.

Published in accordance with the authority contained in 32 CFR part 286.

§ 287.4 Responsibilities.

(a) The DISA Freedom of Information Act (FOIA) Officer at DISA Headquarters, 701 S. Courthouse Road, Arlington, VA, is vested with the authority, within DISA/OMNCS, to release records for all requests coming to Headquarters, DISA, and to the field activities in the Metropolitan Washington Area, and will:

- (1) Make the material described in paragraph 2-101 of DoD Directive 5400.7-R,¹ DoD Freedom of Information

¹Copies may be obtained at cost, from the National Technical Information Service, 5285 Port Royal Rd, Springfield, VA 22161.

Act Program available for public inspection and reproduction. A current index of this material will be maintained in accordance with paragraph 2-101 of DoD 5400.7-R.

(2) Establish education and training programs for all DISA/OMNCS military members and employees who contribute to DISA/OMNCS implementation of the Freedom of Information Act.

(3) Respond to all requests for records from private persons in accordance with 32 CFR part 286 whether the requests are received directly by Headquarters, DISA/OMNCS, or by DISA field activities. Coordinate such release with the General Counsel in any case in which release is, or may be controversial.

(4) Be the DISA/OMNCS principal point of contact for coordination with the Office of the Assistant Secretary of Defense (Public Affairs), reference FOIA issues.

(5) Ensure the cooperation of DISA/OMNCS with the OASD (PA) in fulfilling the responsibilities of monitoring the implementation of the Freedom of Information Act program.

(6) Refer cases of significance to the OASD (PA) for review and evaluation, after coordination with the General Counsel and with the approval of the Chief of Staff, when the issues raised are unusual, precedent setting, or otherwise require special attention or guidance.

(7) Advise the OASD (PA), prior to the denial of a request or prior to an appeal when two or more DoD components are affected by the request for a particular record, and when circumstances suggest a potential public controversy.

(8) Be responsible for the annual reporting requirement contained in 32 CFR part 286.

(9) Furnish copies of the material to be published in the Federal Register to DISA Code ADR.

(b) The mission/support staff Directors and the Chief of Staff, DISA will furnish the FOIA Officer, when requested, with DISA/OMNCS documentary material which qualifies as a record in accordance with 32 CFR part 286, for the purpose of responding to FOIA requests. All such requests for in-

formation will be referred to the FOIA Officer.

(c) The Chief of Staff, DISA will, on behalf of the Director, DISA, respond to the corrective or disciplinary action recommended by the Merit Systems Protection Board for arbitrary or capricious withholding of records requested, pursuant to the Freedom of Information Act, by military members or employees of DISA/OMNCS. This action will be coordinated with the General Counsel, DISA.

(d) The DISA General Counsel, or in his absence, the Deputy General Counsel within DISA/OMNCS is vested with the sole authority to deny, in whole or in part, a request. The General Counsel, DISA will:

(1) Make the decision, whenever a request for a record is to be denied in whole or in part, in accordance with the criteria provided in 32 CFR part 286.

(2) Inform the person denied a record of the basis for the denial of the request and of his or her right to appeal the decision to the Director, DISA via written correspondence.

(3) Ensure that if such an appeal is taken, that the basis for the determination by the Director, DISA not to release the record will be in writing, will state the reasons for the denial, and will inform the requester of his or her right to a judicial review in the appropriate U.S. district court.

(e) DISA (Code ADR) will arrange for the publication of this part in the FEDERAL REGISTER, after coordinating with the DISA/OMNCS Freedom of Information Act Officer and General Counsel.

§287.5 Fees.

Fees charged to the requester are contained in 32 CFR part 286.

§287.6 Reports.

Each major staff element and field activity on the distribution list of this part will furnish an annual report by January 5 to the Freedom of Information Officer, Headquarters, DISA, in accordance with 32 CFR part 286.

§ 287.7 Questions.

Questions on both the substance and procedures of the Freedom of Information Act and the DISA/OMNCS implementation thereof should be addressed to the Freedom of Information Act Officer by the most expeditious means possible, including telephone calls. Freedom of Information Act requests should be addressed as follows: Defense Information Systems Agency, Attention: Code ADA, 701 S. Courthouse Road, Arlington, VA 22204–2199. Calls should be made to (703) 692–2006.

§ 287.8 “For Official Use Only” records.

The designation “For Official Use Only” will be applied to documents and other material only as authorized by 32 CFR part 286.

PART 290—DEFENSE CONTRACT AUDIT AGENCY (DCAA) FREEDOM OF INFORMATION ACT PROGRAM

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APPENDIX A TO PART 290—DCAA’S ORGANIZATION AND MISSION

APPENDIX B TO PART 290—DCAA’S FOIA POINTS OF CONTACT

APPENDIX C TO PART 290—FOR OFFICIAL USE ONLY

APPENDIX D TO PART 290—AUDIT WORKING PAPERS

AUTHORITY: 5 U.S.C. 552.

SOURCE: 56 FR 49685, Oct. 1, 1991, unless otherwise noted.

§ 290.1 Purpose.

This part assigns responsibilities and establishes policies and procedures for a uniform DCAA Freedom of Information Act (FOIA) program pursuant to the provisions of the Freedom of Information Act, 5 U.S.C. 552, as imple-

mented by DoD Directive 5400.7¹ and DoD 5400.7–R.²

§ 290.2 Cancellation.

DCAA Regulation 5410.8, DCAA Freedom of Information Act (FOIA) Program, dated 17 May 1989; DCAAR 5200.1, Control and Protection of “For Official Use Only” Information, dated 12 November 1985; and DCAA HQ Instruction 5200.9, Physical Security of “For Official Use Only” Information within Headquarters, DCAA, dated 20 November 1974, are superseded.

§ 290.3 Applicability and scope.

This rule applies to all DCAA organizational elements, and is to govern written responses by DCAA officials for requests from members of the public for permission to examine, or to be provided with copies of DCAA records. This rule also addresses Agency policies and procedures for handling “For Official Use Only” information, including Field Detachment sensitive information.

§ 290.4 Policy.

It is the policy of DCAA to:

- (a) Promote public trust by making the maximum amount of information available to the public, upon request, pertaining to the operation and activities of the Agency.
- (b) Allow a requester to obtain records from the Agency that are available through other public information services without invoking the FOIA.
- (c) Make available, under the procedures established by DCAAP 5410.14,³ those records that are requested by a member of the general public who cites the FOIA.
- (d) Answer promptly all other requests for information and records under established procedures and practices.

[56 FR 49685, Oct. 1, 1991, as amended at 60 FR 35699, July 11, 1995]

¹Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

²See footnote 1 to § 290.1.

³Copies may be obtained from the Defense Contract Audit Agency, Attn: CMO, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.