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

(5) Fulfills the annual reporting requirement and maintains appropriate records.

(6) Acts as the responsible official for all initial denials of access to the public.

(b) All DIA elements:

(1) When identified by DSP-1A as the Office of Primary Responsibility (OPR) will:

(i) Search files for any relevant records, and/or

(ii) Review records for possible public release within the time constraints assigned, and

(iii) Prepare a documented response in any case of nonrelease.

(2) All employees are required to read this part to ensure familiarity with the requirements of the FOIA as implemented.

(c) *The General Counsel.* (1) Ensures uniformity in the FOIA legal positions within the DIA and with the Department of Defense.

(2) Secures coordination when necessary with the General Counsel, DoD, on denials of public requests.

(3) Acts as the focal point in all judicial actions.

(4) Reviews all final denials.

(d) The Director, and on his behalf, the Chief of Staff:

(1) Exercises overall staff supervision of the FOIA activities of the Agency.

(2) Acts as the responsible official for all denials of appeals.

APPENDIX A TO PART 292—UNIFORM AGENCY FEES FOR SEARCH AND DUPLICATION UNDER THE FREEDOM OF INFORMATION ACT (AS AMENDED)

Search + Review (only in the case of commercial requesters)

a. Manual search or review—

Type	Grade	Hourly rate
Clerical .....	E9/GG-08 and below .....	\$12.00
Professional .....	O1-O6/GG-09-GG-15 .....	25.00
Executive .....	O7/GG-16/ES1 and above .....	45.00

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.

c. Actual time spent travelling to a search site, conducting the search and return may be charged as FOIA search costs.

*General*

Pre-Printed material, per printed page .....	.02
Office copy, per page .....	.15
Microfiche, per page .....	.25

*Aerial Photography Reproduction*

Per Print.....\$2.50

d. See Chapter VI of DoD 5400.7-R for further guidance on fees.

**PART 293—DEFENSE MAPPING AGENCY (DMA) FREEDOM OF INFORMATION ACT PROGRAM**

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APPENDIX D TO PART 293—SAMPLE LETTER NOTIFYING REQUESTER OF MISDIRECTED REQUEST

AUTHORITY: 5 U.S.C. 552.

SOURCE: 56 FR 26614, June 10, 1991, unless otherwise noted. Redesignated at 56 FR 58179, Nov. 18, 1991; 56 FR 59217, Nov. 25, 1991.

**§293.1 Purpose.**

(a) To prescribe Defense Mapping Agency (DMA) policy and procedures for handling requests under the Freedom of Information Act (FOIA).

(b) To implement 5 U.S.C. 552, and 32 CFR part 285.

[56 FR 26614, June 10, 1991. Redesignated and amended at 56 FR 58179, Nov. 18, 1991; 56 FR 59217, Nov. 25, 1991]

**§293.2 Applicability.**

The provisions of this part apply to all elements of DMA.

**§ 293.3 Scope.**

This part does not apply to requests from members of Congress, who are governed by DoD Directive 5400.4<sup>1</sup> or from the General Accounting Office, which is governed by DoD Directive 7650.1.<sup>2</sup>

**§ 293.4 Definitions.**

(a) *FOIA record.* (1) 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 DMA in connection with the transaction of public business and in DMA's possession and control at the time of the FOIA request, are considered agency records. For items not considered an agency record, see paragraph 1-402 of DoD 5400.7-R.<sup>3</sup>

(2) Normally, computer software, including source code, object code, and listings of source and object codes, regardless of medium are not agency records. (See paragraph 1-402 of DoD 5400.7-R for a complete definition of an agency record.)

(3) 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 U.S.C. 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, the requester should be directed to the appropriate source to obtain the record.

(b) *FOIA request.* A FOIA request is a written request for DMA records, made by any person, including a member of the public (U.S. or foreign citizen), an organization, or a business, but not including a Federal agency or a fugitive from law, that either explicitly or im-

plicitly invokes the FOIA, DoD Directive 5400.7,<sup>4</sup> DoD 5400.7-R, or this part.

(c) *Pertinent records.* For the purpose of this part, records shall be considered pertinent if they concern either an individual who is, or foreseeably may become, involved in litigation involving the United States or a matter which is, or foreseeably may become, the subject of litigation involving the United States.

[56 FR 26614, June 10, 1991. Redesignated and amended at 56 FR 58179, Nov. 18, 1991; 56 FR 59217, Nov. 25, 1991]

**§ 293.5 Policy.**

(a) *Creating a record.* A record must exist and be in the possession and control of DMA at the time of a request to be charged for providing the existing record. (See paragraph 1-506 of DoD 5400.7-R.)

(b) *Public requests.* It is DMA policy to make available to the public the maximum amount of information concerning its operations and activities. Exemptions to this policy are stated in 5 U.S.C. 552 and DoD 5400.7-R. However, exempt records may be released to the public when their disclosure would not be inconsistent with the Privacy Act, DMA Instruction 5400.11,<sup>5</sup> or any other statutory requirements, and when no legitimate government purpose would be served by withholding them. DoD 5400.7-R provides additional policy guidance regarding the release of DMA records.

(c) *News media requests.* Requests from news media for records that would not be withheld under FOIA shall be released promptly in order to provide timely information to the public and eliminate the need to invoke the provisions of FOIA.

(d) *Contract requests.* Guidance for the release of information received from a non-U.S. Government source is contained in paragraph 5-207 of DoD 5400.7-R.

(e) *Classified records.* If classified records are requested, see additional

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

<sup>2</sup>See footnote 1 to § 293.3

<sup>3</sup>See footnote 1 to § 293.3

<sup>4</sup>See footnote 1 to § 293.3

<sup>5</sup>Copies may be obtained by written request to the Defense Mapping Agency, Attn: AO (Stop A-2) 8613 Lee Highway, Fairfax, VA 22031-2138

guidance outlined in Chapter VII, DMA Manual 5200.1.<sup>6</sup>

(f) *FOUO records.* (1) Information that has not been given a security classification pursuant to the criteria of an Executive order, but which may be withheld from the public for one or more of the reasons cited in FOIA Exemptions 2 through 9 shall be considered as being for official use only. No other material shall be considered or marked FOR OFFICIAL USE ONLY (FOUO), and FOUO is not authorized as an anemic form of classification to protect national security interests.

(2) The prior application of FOUO markings is not a conclusive basis for withholding a record that is requested under FOIA. When such a record is requested, the information in it shall be evaluated to determine whether under current circumstances, FOIA exemptions apply in withholding the record or portions of it. If any exemption(s) apply, the record may be released when it is determined that no governmental interest will be jeopardized by its release.

(g) *Historical papers.* Records such as notes, working papers, and drafts retained as historical evidence of DoD component actions enjoy no special status apart from the exemptions under the FOIA.

(h) *Fees.* Chapter VI, DoD 5400.7-R, should be consulted before fees are assessed. Fee application is discussed in paragraph 6-101, fee restrictions in paragraph 6-102, fee waivers in paragraph 6-103 and fee assessment in paragraph 6-104.

[56 FR 26614, June 10, 1991. Redesignated and amended at 56 FR 58179, Nov. 18, 1991; 56 FR 59217, Nov. 25, 1991]

### § 293.6 Responsibilities.

(a) The Director, Public Affairs (DMA(PA)), is designated Freedom of Information Officer (FOIO) and is responsible for administering the FOIA program within DMA. The DMA(PA) is also denial authority for “no record” FOIAs. HQ DMA(PA) will:

(1) Receive, log, and determine administrative action required on all FOIA requests received at HQ DMA. If a record is held by DMA, the FOIO will

forward a copy of the FOIA request to the custodian of the record for comments regarding releasability of the requested record. Following receipt of the custodian’s comments and a copy of the requested documents, FOIO will review the comments, make a preliminary releasability determination, and prepare the initial response with coordination by HQ DMA(GC). If it is apparent to the custodian that the material will be released, two copies of the requested record will be forwarded to HQ DMA(PA) (one for release and one for record keeping).

(2) Prepare DD Form 2564, “Annual Report—Freedom of Information Act,” and forward it to the Office of the Assistant Secretary of Defense (Public Affairs) (OASD(PA)), as directed.

(b) The Chief of Staff, the Deputy General Counsel and the DMA Freedom of Information of Information Act Officer (DMA(PA)) are delegated authority to initially deny release of DMA records. This denial authority is also delegated to Component Directors and Associate General Counsels (AGC) as follows:

(1) AGC AC for the DMA Aerospace Center (DMAAC).

(2) AGC HTC for the DMA Hydrographic/Topographic Center (DMAHTC), DMA Combat Support Center (DMACSC), and the Defense Mapping School (DMS).

(3) AGC SC—for the DMA Reston Center (DMARC), DMA Systems Center (DMASC), and DMA Technical Services Center (DMATSC).

(4) AGC(KL) (DMA Contract Law Office) for contract related issues.

This authority may not be redelegated. A copy of all Component denial letters will be forwarded to HQ DMA(GC).

(c) General Counsel:

(1) HQ DMA(GC) is responsible for all appeals to FOIA actions and will provide HQ DMA(PA) with a copy of the initial appeal letter and DMA’s response to it. The DMA Deputy Director (DD) and HQ DMA(GC) are delegated authority to make final determinations on appeals in accordance with the provisions of section 3, chapter V of DoD 5400.7-R.

(2) Coordination with Department of Justice:

<sup>6</sup>See footnote 5 to § 293.5(b)

(i) HQ DMA(GC) will notify the appropriate United States Attorney prior to the release of any FOIA request for records which are pertinent to pending litigation against the United States.

(ii) The office holding records sought under the FOIA shall notify the FOIO whether such records are pertinent to pending or potential litigation involving the United States. The records holder may request the assistance of Counsel in making a determination. The record holder shall advise the FOIO, in writing, whether any of the requested records have been determined to be pertinent to such litigation. Prior to release of such records, HQ DMA(PA) shall notify HQ DMA(GC) of the request. Component FOIOs shall notify the appropriate Associate General Counsel who will notify the United States Attorney, and shall coordinate the release of such records with HQ DMA(GC) and the Department of Justice.

(d) The DMA Director of Human Resources Management (HR) will establish and implement appropriate procedures for responding to any corrective actions recommended by the Office of Personnel Management in cases involving arbitrary or capricious withholding of records by DMA officials pursuant to section 4, chapter V, DoD 5400.7-R. HQ DMA(HR) and HQ DMA(PA) shall implement training and information requirements as outlined in chapter VII, DoD 5400.7-R.

(e) Component PAs will serve as FOIO at the Component level. Components without PAs will appoint a FOIO. Component FOIOs will:

(1) Receive, log, and determine administrative action required for all FOIA requests received at the Component, except those concerning DMA contracts. (See 293.6(e)(2)). If a record is held by the Component, the FOIO will forward a copy of the FOIA request to the custodian of the record for comments regarding releasability of the requested record. Following receipt of the custodian's comments and a copy of the requested documents, the FOIO will review the comments, make a preliminary releasability determination, and prepare the initial response for coordination by the appropriate Associate General Counsel as identified in

§293.6(b). If it is apparent to the records custodian that the material will be released two copies of the requested record will be forwarded to HQ DMA(PA) (one for release and one for record keeping).

(2) Refer all FOIA requests concerning DMA contracts not held at the Component level to DMAHTC(PA), which has the responsibility for processing such requests and for interfacing with the DMA Directorate for Acquisition, Installations and Logistics HQ DMA(AQ) and the DMA Contract Law Office (KL) located at DMAHTC.

(3) Submit DD Form 22564, "Annual Report—Freedom of Information Act" to HQ DMA(PA) by January 15 each year. (See chapter VII of DoD 5400.7-R for guidance.)

(f) All DMA organizations will:

(1) Upon receipt of correspondence which either explicitly or implicitly invokes the FOIA immediately forward such correspondence to HQ DMA(PA) or the Component FOIO.

(2) The record holder will, upon receipt of a FOIA action, immediately review the requested records to determine the releasability or denial under the nine FOIA exemptions contained in 5 U.S.C. 552, as amended. Written comments regarding the releasability of records must be provided to the FOIO forwarding the action within the timeframes specified. Consultation with the FOIO, HQ DMA(GC), and Component AGCs as appropriate, is recommended.

[56 FR 26614, June 10, 1991. Redesignated and amended at 56 FR 58179, Nov. 18, 1991; 56 FR 59217, Nov. 25, 1991]

#### §293.7 Procedures.

(a) *Mandatory expeditious handling—*

(1) *Record released.* The initial determination of whether to release a record upon request will normally be made and a decision reported to the requester within 10 working days. The record requested will be forwarded promptly, usually with the initial response, provided the requester has met the criteria for release. A sample letter is shown at appendix A to this part 293.

(2) *Interim response.* If the requested record cannot be made available within 10 working days, an interim response will be forwarded. Any delay beyond

the initial 10 working days may not exceed 10 additional working days and will be authorized only for the reasons described in section 2, chapter V, DoD 5400.7-R. A sample letter is shown at appendix B to this part 293.

(3) *No record.* When providing a “no record” response in answer to a request, the requester must be advised that such a response may be considered to be adverse, and if so interpreted, may be appealed using normal appeal procedures (see §293.7(a)(4)). An additional records search shall be conducted based on the receipt of an appeal to a “no record” response as part of the appellate process.

(4) *Record denied.* If a request for a record is denied, in whole or in part, the requester will be given a written explanation for such a determination by an official designated in §293.6. The requester will also be advised of his/her right to appeal the denial to the HQ DMA(GC) within 60 calendar days from the date of the denial letter. The letter will also include the name and address of the official responsible for the denial. A sample letter is at appendix C to this part 293. All denials must have benefit of a legal review prior to signature.

(5) *Request appealed.* Final determination on appeals will normally be made within 20 working days of receipt by the Deputy Director or General Counsel. If, due to unusual circumstances, additional time is needed to decide the appeal, the final determination may be delayed for the number of working days, not to exceed 10, which were not used as additional time for responding to the initial request. Final denials to provide a requested record will be made in writing by the Deputy Director or General Counsel in accordance with the appeal procedures prescribed in section 3, chapter V, DoD 5400.7-R.

(6) *Request referred.* If the record requested was originated by another agency or Component, it will be referred promptly to the originating agency or Component for disposition. The period allowed for responding to a request misdirected by the requester will not begin until it is received by the referral. A sample letter is shown at appendix D to this part 293.

(b) *Facilities for inspection and copying records.* (1) The handling of all requests from the public to inspect and copy records will be in strict accordance with the procedures prescribed in DoD 5400.7-R. Subject to exemptions contained in 5 U.S.C. 552, as amended, DMA will ensure easy access by the public for inspection and copying of records described in 5 U.S.C. 552, unless such records have been published and copies offered for sale. This inspection and copying will take place in appropriate rooms designated by HQ DMA(PA) and Components.

(2) HQ DMA and Components will make available current indexes which identify material described in paragraph (a)(2) of 5 U.S.C. 552, as amended.

(3) Use of DMA inspection and copying facilities by the public will be made by appointment only. Appointments will normally be requested by letter to FOIA officers or those acting in that capacity.

[56 FR 26614, June 10, 1991. Redesignated and amended at 56 FR 58179, 58180, Nov. 18, 1991; 56 FR 59217, Nov. 25, 1991]

**§293.8 Information requirements.**

Reporting requirements prescribed by this part have been assigned Report Control Symbol DD-PA(A)1365. (See chapter VII, DoD 5400.7-R.)

APPENDIX A TO PART 293—SAMPLE LETTER COMPLYING WITH REQUEST

Dear \_\_\_\_\_:

This is in response to your letter of \_\_\_\_\_ in which you requested \_\_\_\_\_ under the Freedom of Information Act, 5 U.S.C. 552, as amended.

After careful review and consideration of your request, we have determined that the record(s) you seek is(are) releasable and is(are) enclosed. Search and duplication costs have been waived. (See Chapter VI, DoD 5400-7-R for guidance on fee assessment.)

Sincerely,  
(Signed)

\_\_\_\_\_  
(Signature block of authorized official)

Enclosure.  
As stated.

[56 FR 26614, June 10, 1991. Redesignated and amended at 56 FR 58179, 58180, Nov. 18, 1991; 56 FR 59217, Nov. 25, 1991]

APPENDIX B TO PART 293—SAMPLE LETTER NOTIFYING REQUESTER OF EXTENSION OF TIME

Dear \_\_\_\_\_:

This is in response to your letter of \_\_\_\_\_ in which you requested \_\_\_\_\_ under the Freedom of Information Act, 5 U.S.C. 552, as amended.

In order to process your request for \_\_\_\_\_ under FOIA, an extension of time will be necessary because of (use one of the following explanations):

a. The need to search for, collect, and properly examine a voluminous amount of separate and distinct records covered by your request;

b. The need to search for and collect the requested records from geographically separated elements within the Defense Mapping Agency;

c. The need for consultation, which will be conducted with all practicable speed, with another agency or geographically separated element of the Defense Mapping Agency having a substantial interest in the determination of your request;

d. Other.

A determination regarding your request will be made by (date) \_\_\_\_\_.

Sincerely,  
(Signed)

(Signature block of authorized official)

NOTE: Specify a date that will not result in an extension of time more than the authorized 10 working days.

[56 FR 26614, June 10, 1991. Redesignated and amended at 56 FR 58179, 58180, Nov. 18, 1991; 56 FR 59217, Nov. 25, 1991]

APPENDIX C TO PART 293—SAMPLE LETTER DENYING REQUEST OR PARTIAL DENIAL FOR ACCESS TO OR FOR OBTAINING COPY OF RECORDS

Dear \_\_\_\_\_:

This is in response to your letter of \_\_\_\_\_ in which you requested \_\_\_\_\_ under the Freedom of Information Act, 5 U.S.C. 552, as amended.

After careful review and consideration of your request, we have determined that (the) (a portion of) document(s) you seek is (are) exempt from disclosure under FOIA. It is not releasable because it contains information that a (copy or paraphrase the applicable exemption set forth in DoD 5400.7-R).

The decision to withhold release of this (these) record(s) may be appealed in writing to the General Counsel, Defense Mapping Agency, within 60 calendar days from the date of this letter. You should include in your appeal any reasons for reconsideration

you wish to present. A copy of this letter should be enclosed with your appeal, and forwarded to the Defense Mapping Agency, ATTN: GC (A-7), 8613 Lee Highway, Fairfax, VA 22031-2137.

NOTE: If this is a partial denial, add the paragraph below if copies of releasable records are to be sent to the requester.

Copies of the releasable portion of the requested record(s) (are enclosed) (will be sent promptly under separate cover).

Sincerely,  
(Signed)

(Signature block of authorized denial authority)

NOTE: Any deletions made in the records should be justified on the grounds of the exemptions provided in DoD 5400.7-R. This format should be varied to fit the situation.

[56 FR 26614, June 10, 1991. Redesignated and amended at 56 FR 58179, 58180, Nov. 18, 1991; 56 FR 59217, Nov. 25, 1991]

APPENDIX D TO PART 293—SAMPLE LETTER NOTIFYING REQUESTER OF MISDIRECTED REQUEST

Dear \_\_\_\_\_:

This is in response to your letter of \_\_\_\_\_ in which you requested \_\_\_\_\_ under the Freedom of Information Act, 5 U.S.C., section 552, as amended.

Your letter was misdirected to this Agency. We have forwarded same to (activity or agency to which the request was referred). You may expect to hear from them shortly.

For future reference, any other requests for similar records should be addressed to (name and address of agency).

Sincerely,  
(Signed)

(Signature block of authorized authority)

[56 FR 26614, June 10, 1991. Redesignated and amended at 56 FR 58179, 58180, Nov. 18, 1991; 56 FR 59217, Nov. 25, 1991]

PART 295—OFFICE OF THE INSPECTOR GENERAL, FREEDOM OF INFORMATION ACT PROGRAM

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