

connection with related government litigation or adjudicative proceedings.

(b) The identity of firms or individuals being investigated for alleged irregularities involving contracting with Department of Defense when no indictment has been obtained nor any civil action filed against them by the United States.

(c) Information obtained in confidence, expressed or implied, in the course of a criminal investigation by a criminal law enforcement agency or office within a DoD Component, or a lawful national security intelligence investigation conducted by an authorized agency or office within a DoD Component. National security intelligence investigations include background security investigations and those investigations conducted for the purpose of obtaining affirmative or counterintelligence information.

(3) The right of individual litigants to investigative records currently available by law (such as, the Jencks Act, 18 U.S.C. 3500) is not diminished.

(4) When the subject of an investigative record is the requester of the record, it may be withheld only as authorized by DoD Directive 5400.11 (32 CFR part 286a).

(5) Exclusions. Excluded from the above exemptions are the following two situations as applicable to the Department of Defense and the OIG:

(a) Whenever a request is made which involves access to records or information compiled for law enforcement purposes, and the investigation or proceeding involves possible violation of criminal law where there is reason to believe that the subject of the investigation or proceeding is unaware of its pendency, and the disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings, the OIG may, during only such times as that circumstance continues, treat the records or information as not subject to the FOIA. In such situation, the response to the requesters will state that no records were found.

(b) Whenever informant records maintained by a criminal law enforcement organization within the OIG under the informant's name or personal identifier are requested by a third party using the informant's name or personal identifier, the OIG may treat the records as not subject to the FOIA, unless the informant's status as an informant has been officially confirmed. If it is determined that the records are subject to exemption (b)(7), the response to the requester will state that no records were found.

#### H. Exemption (b)(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.

#### I. Exemption (b)(9)

Those containing geological and geophysical information and data (including maps) concerning wells.

### PART 296—NATIONAL RECONNAISSANCE OFFICE FREEDOM OF INFORMATION ACT PROGRAM REGULATION

Sec.

- 296.1 Purpose.
- 296.2 Definitions.
- 296.3 Indexes.
- 296.4 Procedures for request of records.
- 296.5 Appeals.

AUTHORITY: 5 U.S.C. 552.

SOURCE: 58 FR 60382, Nov. 16, 1993, unless otherwise noted.

#### § 296.1 Purpose.

The purpose of this part is to provide policies and procedures for the National Reconnaissance Office (NRO) implementation of the Freedom of Information Act (FOIA), and to promote uniformity in the NRO FOIA program.

#### § 296.2 Definitions.

(a) *Freedom of Information Act Appellate Authority.* The Chief of Staff, NRO.

(b) *Initial Denial Authority.* The Chief, Information Access and Release Center, NRO.

[62 FR 12544, Mar. 17, 1997]

#### § 296.3 Indexes.

The NRO does not originate final orders, opinions, statements of policy, interpretations, staff manuals or instructions that affect a member of the public of the type covered by the indexing requirement of 5 U.S.C. 552(a)(2). The Director, NRO, has therefore determined, pursuant to pertinent statutory and executive order requirements, that it is unnecessary and impracticable to publish an index of the type required by 5 U.S.C. 552.

#### § 296.4 Procedures for request of records.

(a) *Requests.* Request for access to records of the National Reconnaissance Office may be filed by mail addressed to the Chief, Information Access and Release Center, National Reconnaissance Office, 14675 Lee Road, Chantilly,

VA 20151-1715. Requests need not be made on any special form but must be by letter or other written statement identifying the request as a Freedom of Information Act request and setting forth sufficient information reasonably describing the requested record. All request should contain a willingness to pay assessable FOIA fees.

(b) *Determination and notification.* When the requested record has been located and identified, the Initial Denial Authority shall determine whether the record is one which, consistent with statutory requirements, executive orders and appropriate directives, may be released or should be exempted under the provisions of 5 U.S.C. 552. Normally, the Initial Denial Authority, shall notify the requester of the determination within 10 working days of the receipt of the request.

(c) *Extension of response time.* In unusual circumstances, when additional time is needed to respond, normally the Initial Denial Authority shall notify the requester in writing within the initial response period of the delay, the reasons therefore, and if specified, a date, not to exceed 10 working days, on which a determination is expected to be dispatched. When a significant number of requests have been received, e.g., 10 or more, the requests shall be initially processed in order of receipt. However, this does not preclude the Initial Denial Authority from completing action on a request which can be easily answered, regardless of its ranking within the order of receipt.

(d) *Fees.* (1) *General.* As a component of the Department of Defense, the applicable published Department rules and schedules with respect to the schedule of fees chargeable and waiver of fees will also be the policy of NRO. See 32 CFR 286.33.

(2) *Advance payments.* (i) Where a total fee to be assessed is estimated to exceed \$250, advance payment of the estimated fee will be required before processing of the request, except where assurances of full payment are received from a requester with a history of prompt payment. Where a requester has previously failed to pay a fee within 30 calendar days of the date of the billing, the requester will be required to pay the full amount owed, plus any

applicable interest, or demonstrate that he or she has paid the fee, as well as make an advance payment of the full amount of any estimated fee before processing of a new or pending request continues.

(ii) For all other requests, advance payment, i.e., a payment made before work is commenced, will not be required. Payment owed for work already completed is not an advance payment; however, responses will not be held pending receipt of fees from requesters with a history of prompt payment. Fees should be paid by certified check or postal money order forwarded to the Director, External Relations, and made payable to the Treasurer of the United States.

[58 FR 60382, Nov. 16, 1993, as amended at 62 FR 12544, Mar. 17, 1997]

#### **§296.5 Appeals.**

Any person denied access to records, denied a fee waiver, or who considers a no record determination to be adverse in nature, may, within 60 days after notification of such denial, file an appeal to the Freedom on Information Act Appellate Authority, National Reconnaissance Office. Such an appeal shall be in writing addressed to the Chief, Information Access and Release Center, National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151-1715, shall reference the initial denial, and shall contain in sufficient detail and particularity, the grounds upon which the requester believes the release of the information, or granting of the fee waiver, is required. The Freedom of Information Act Appellate Authority shall normally make a final determination on an appeal within 20 working days after receipt of the appeal.

[58 FR 60382, Nov. 16, 1993, as amended at 62 FR 12544, Mar. 17, 1997]

### **PART 298—DEFENSE INVESTIGATIVE SERVICE (DIS) FREEDOM OF INFORMATION ACT PROGRAM**

Sec.

- 298.1 Purpose.
- 298.2 Organization.
- 298.3 Records maintained by DIS.
- 298.4 Procedure for release of DIS records.
- 298.5 Information requirements.