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32 CFR Ch. V (7-1-09 Edition)

Type	Grade	Hourly rate (\$)
Minimum Charge	8.30

Notes: Professional and Executive (To be established at actual hourly rate prior to search. A minimum charge will be established at 1/2 hourly rates.

(f) *Other technical data records.* Charges for any additional services not specifically consistent with Volume 11A of DoD 7000.14-R, shall be made by Activities at the following rates:

Type	Cost (\$)
1. Minimum charge for office copy (up to six images)	3.50
2. Each additional image10
3. Each typewritten page	3.50
4. Certification and validation with seal, each	5.20
5. Hand-drawn plots and sketches, each hour or fraction thereof	12.00

Subpart G—Reports

§ 518.22 Reports control.

(a) *General.* (1) The Annual FOIA Report is mandated by the statute and reported on a fiscal year basis. Due to the magnitude of the requested statistics and the need to ensure accuracy of reporting, Army Activities shall track this data as requests are processed. This will also facilitate a quick and accurate compilation of statistics. Army Activities shall forward their report to DA, FOIA/PA Office, no later than October 15 following the fiscal year's close. It may be submitted electronically and via hard copy accompanied by a computer diskette. In turn, DA and DoD will produce a consolidated report for a submission to the Attorney General and ensure that a copy of the consolidated report is placed on the Internet for public access.

(2) Existing Army standards and registered data elements are to be utilized to the greatest extent possible in accordance with the provisions of DoD 8320.1-M, "Data Administration Procedures."

(3) The reporting requirement outlined is assigned Report Control Symbol DD-DA&M(A)1365, FOIA Report to Congress.

(b) *Reporting time.* Each DA IDA shall prepare statistics and accumulate paperwork for the preceding fiscal year on those items prescribed for the an-

nual report. The IDAs will follow guidelines below and submit the information to the DA, FOIA/PA Office, on or before the 15th day of each October.

(1) Each reporting activity will submit the information requested on the DD Form 2564, "Annual Report Freedom of Information Act." The form is available through normal publication channels.

(2) Each IDA will submit the information requested on the DD Form 2564, excluding items 3, 4, and 9c.

(3) The Judge Advocate General (DAJA) and Chief of Engineers (COE) will submit the information requested on the Form DD 2564, item 9c.

(4) The General Counsel (SAGC) will submit the information requested on the DD Form 2564, items 3 and 4.

(5) The DA, FOIA/PA Office will compile the data submitted in the Army's Annual Report. This report will be submitted to the DoD Office for Freedom of Information and Security Review on or before the 30th day of each November.

§ 518.23 Annual report content.

The current edition of DD Form 2564 shall be used to submit Activity input. Instructions for completion follows:

(a) *ITEM 1 Initial Request Determinations.* Please note that initial PA requests, which are also processed as initial FOIA requests, are reported here.

(1) *Total requests processed.* Enter the total number of initial FOIA requests responded to (completed) during the fiscal year. This should include pending cases at the end of the prior fiscal year, Total Actions is the sum of Items 1b through 1e, on the DD Form 2564. This total may exceed Total Requests Processed.

(2) *Granted in full.* Enter the total number of initial FOIA requests responded to that were granted in full during the fiscal year. (This may include requests granted by your office, yet still requiring action by another office).

(3) *Denied in part.* Enter the total number of initial FOIA requests responded to and denied in part based on one or more of the FOIA exemptions. (Do not report "Other Reason Responses" as a partial denial here, unless a FOIA exemption is also used).

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(4) *Denied in full.* Enter the total number of initial FOIA requests responded to and denied in full based on one or more of the FOIA exemptions. (Do not report “Other Reason Responses” as denials here, unless a FOIA exemption is also used).

(5) *“Other Reason” responses.* Enter the total number of initial FOIA requests in which you were unable to provide all or part of the requested information based on an “Other Reason” response.

(6) *Total actions.* Enter the total number of FOIA actions taken during the fiscal year. This number will be the sum of items 1b, through 1e. Total Actions must be equal to or greater than the number of Total Requests Processed.

(b) *ITEM 2 Initial Request Exemptions and Other Reasons—(1) Exemptions invoked on initial request determinations.* Enter the number of times an exemption was claimed for each request that was denied in full or in part. Since more than one exemption may be claimed when responding to a single request, this number will be equal to or greater than the sum of (3) and (4), above. The (b)(7) exemption is reported by subcategories (A) through (F): (A) Interfere with Enforcement; (B) Fair Trial Right; (C) Invasion of Privacy; (D) Protect Confidential Source; (E) Disclose Techniques, and (F) Endanger Life or Safety.

(2) *“Other Reasons” cited on initial determinations.* Identify the “Other Reason” response cited when responding to a FOIA request and enter the number of times each was claimed.

(i) *No records.* Enter the number of times a reasonable search of files failed to identify records responsive to subject request.

(ii) *Referrals.* Enter the number of times a request was referred to another DoD Component or Federal Agency for action.

(iii) *Request withdrawn.* Enter the number of times a request and/or appeal was withdrawn by a requester.

(iv) *Fee-related reason.* Requester is unwilling to pay the 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 a fee estimate.

(v) *Records not reasonably described.* Enter the number of times a FOIA request could not be acted upon since the record had not been described with sufficient particularity to enable the Army Activity to locate it by conducting a reasonable search.

(vi) *Not a proper FOIA request for some other reason.* Enter the number of times the requester has failed unreasonably to comply with procedural requirements, other than fee-related imposed by this part or an Army Activity’s supplementing regulation.

(vii) *Not an agency record.* Enter the number of times a requester was provided a response indicating the requested information was not a record within the meaning of the FOIA and this part.

(viii) *Duplicate request.* Record number of duplicate requests closed for that reason (e.g., request for the same information by the same requester). This includes identical requests received via different means (e.g., electronic mail, facsimile, mail, and courier) at the same or different times.

(ix) *Other (specify).* Any other reason a requester does not comply with published rules, other than those reasons outlined in paragraphs (b)(2)(i) through (viii) of this section.

(x) *Total.* Enter the sum of paragraphs (b)(2)(i) through (ix) of this section, in the block provided on the form (total other reasons). This number will be equal to or greater than the number in item 1e on the report form, since more than one reason may be claimed for each “Other Reason” response.

(3) (b)(3) *Statutes invoked on initial determinations.* Identify the number of times you have used a specific statute to support each (b)(3) exemption. List the statutes used to support each (b)(3) exemption; the number of instances in which the statute was cited; note whether or not the statute has been upheld in a court hearing; and provide a concise description of the material withheld in each individual case by the statute’s use. Ensure you cite the specific sections of the acts invoked. The total number of instances reported will be equal to or greater than the total number of (b)(3) exemptions listed in Item 2a on the report form.

(c) *ITEM 3 Appeal Determinations.* Please note that PA appeals, which are also processed as FOIA appeals, are reported here.

(1) *Total appeal responses.* Enter the total number of FOIA appeals responded to (completed) during the fiscal year.

(2) *Granted in full.* Enter the total number of FOIA appeals responded to and granted in full during the year.

(3) *Denied in part.* Enter the total number of FOIA appeals responded to and denied in part based on one or more of the FOIA exemptions. (Do not report “Other Reason Responses” as a partial denial here, unless a FOIA exemption is used also.)

(4) *Denied in full.* Enter the total number of FOIA appeals responded to and denied in full based on one or more of the FOIA exemptions. (Do not report “Other Reason Responses” as denials here, unless a FOIA exemption is used also.)

(5) *“Other Reason” responses.* Enter the total number of FOIA appeals in which you were unable to provide the requested information based on an “Other Reason” response.

(6) *Total actions.* Enter the total number of FOIA appeal actions taken during the fiscal year. This number will be the sum of items 3b, through 3e, and should be equal to or greater than the number of Total Appeal Responses, item 3a on the report form.

(d) *ITEM 4 Appeal Exemptions and Other Reasons—(1) Exemptions invoked on appeal determinations.* Enter the number of times an exemption was claimed for each appeal that was denied in full or in part. Since more than one exemption may be claimed when responding to a single request, this number will be equal to or greater than the sum of items 3c, and 3d on the report form. Note that the (b)(7) exemption is reported by subcategory (A) through (F): (A) Interfere with Enforcement; (B) Fair Trial Right; (C) Invasion of Privacy; (D) Protect Confidential Source; (E) Disclose Techniques, and (F) Endanger Life or Safety.

(2) *“Other Reasons” cited on appeal determinations.* Identify the “Other Reason” response cited when responding to a FOIA appeal and enter the number of times each was claimed. This number

may be equal to or possibly greater than the number in item 3e on the report form, since more than one reason may be claimed for each “Other Reason” response.

(3) *(b)(3) Statutes invoked on appeal determinations.* Identify the number of times a specific statute has been used to support each (b)(3) exemption identified in item 4a on the report form DD 2564. List the statutes used to support each (b)(3) exemption; the number of instances in which the statute was cited; note whether or not the statute has been upheld in a court hearing; and provide a concise description of the material withheld in each individual case by the statute’s use. Ensure citation to the specific sections of the statute invoked. The total number of instances reported will be equal to or greater than the total number of (b)(3) exemptions listed in Item 4a on the report form.

(e) *ITEM 5 Number and Median Age of Initial Cases Pending:*

(1) *Total initial cases pending:*

(i) *Beginning and ending report period:* Midnight, 2400 hours, September 30, of the Preceding Year—or—0001 hours, October 1, is the beginning of the report period. Midnight, 2400 hours, is the close of the reporting period.

(ii) The number for the beginning report period must be the same number reported as of the end of the report period from the previous report.

(2) *Median age of initial requests pending:* Report the median age in days (including holidays and weekends) of initial requests pending.

(3) *Examples of median calculation.* (i) If given five cases aged 10, 25, 35, 65, and 100 days from date of receipt as of the previous September 30th, the total requests pending is five (5). The median age (days) of open requests is the middle, not average value, in this set of numbers (10, 25, 35, 65, and 100), 35 (the middle value in the set).

(ii) If given six pending cases, aged 10, 20, 30, 50, 120, and 200 days from date of receipt, as of the previous September 30th, the total requests pending is six (6). The median age (days) of open requests 40 days (the mean [average] of the two middle numbers in the set, in this case the average of middle values 30 and 50).

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(4) *Accuracy of calculations.* Activities must ensure the accuracy of calculations. As backup, the raw data used to perform calculations should be recorded and preserved. This will enable recalculation of median [and mean values] as necessary. Activities may require subordinate elements to forward raw data, as deemed necessary and appropriate.

(5) *Average.* If an Activity believes that “average” (mean) processing time is a better measure of performance, then report “averages” (means) as well as median values (e.g., with data reflected and plainly labeled on plain bond as an attachment to the report). However, “average” (mean) values will not be included in the consolidated Army report unless all Activities report it.

(f) *ITEM 6 Number of Initial Requests Received During the Fiscal Year.* Enter the total number of initial FOIA requests received during the reporting period (fiscal year being reported).

(g) *ITEM 7 Types of Requests Processed and Median Age.* Information is reported for three types of initial requests completed during the reporting period: Simple; Complex; and Expedited Processing. The following items of information are reported for these requests:

(1) *Total number of initial requests.* Enter the total number of initial requests processed [completed] during the reporting period (fiscal year) by type (Simple, Complex and Expedited Processing) in the appropriate row on the form.

(2) *Median age (days).* Enter the median number of days [calendar days including holidays and weekends] required to process each type of case (Simple, Complex and Expedited Processing) during the period in the appropriate row on the form.

(3) *Example.* Given seven initial requests, multitrack—simple completed during the fiscal year, aged 10, 25, 35, 65, 79, 90 and 400 days when completed. The total number of requests completed was seven (7). The median age (days) of completed requests is 65, the middle value in the set.

(h) *ITEM 8 Fees Collected From the Public.* Enter the total amount of fees collected from the public during the

fiscal year. This includes search, review and reproduction costs only.

(i) *ITEM 9 FOIA Program Costs—(1) Number of full time staff.* Enter the number of personnel your agency had dedicated to working FOIA full time during the fiscal year. This will be expressed in work-years [man-years]. For example: “5.1, 3.2, 1.0, 6.5, et al.”

TABLE 7-1—SAMPLE COMPUTATION OF WORK YEARS FOR FULL TIME STAFF

Employee	Number of months worked	Work-years	Note
Smith, Jane.	6	.50	Hired full time at middle of fiscal year
Public, John Q..	4	.34	Dedicated to full time FOIA processing last quarter of the fiscal year
Brown, Tom.	12	1.00	Worked FOIA full time all fiscal year
Totals	22	1.84	

(2) *Number of part time staff.* Enter the number of personnel your agency had dedicated to working FOIA part time during the fiscal year. This will be expressed in work-years [man-years]. For example: “5.1, 3.2, 1.0, 6.5, et al.”

TABLE 7-2—COMPUTATION OF WORK YEARS FOR PART TIME STAFF

Employee	Number of months worked	Work-years	Note
Public, John Q..	200	.1	Amount of time devoted to part time FOIA processing before becoming full time FOIA processor in previous example
White, Sally.	400	.2	Processed FOIAs part time while working as paralegal in General Counsel's Office
Peters, Ron.	1,000	.5	Part time employee dedicated to FOIA processing
Totals	1,600/2,000 (hours worked in a year) equals 0.8 work-years		

(3) *Estimated litigation cost.* Report your best estimate of litigation costs

for the FY. Include all direct and indirect expenses associated with FOIA litigation in U.S. District Courts, U.S. Circuit Courts of Appeals, and the U.S. Supreme Court.

(4) *Total program cost.* Report the total cost of FOIA program operation within your agency. Include your litigation costs in this total. While you do not have to report detailed cost information as in the past, you should be able to explain the techniques by which you derived your agency's total cost figures if the need arises.

(i) Before the close of each fiscal year, the DoD OFOISR will dispatch the latest OSD Composite Rate Chart for military personnel to DoD Components. This information may be used in computing military personnel costs.

(ii) Army Activities should compute their civilian personnel costs using rates from local Office of Personnel Management (OPM) Salary Tables and shall add 16% for benefits.

(iii) Data captured on DD Form 2086, and DD Form 2086-1, shall be summarized and used in computing total costs.

(iv) An overhead rate of 25% shall be added to all calculated costs for supervision, space, and administrative support.

(j) *ITEM 10 Authentication.* The official that approves the agency's report submission to DA will sign and date; enter typed name and duty title; and provide both the agency's name and phone number for questions about the report. The consolidated Annual FOIA Report will be made available to the public in electronic format by DoD.

APPENDIX A TO PART 518—REFERENCES

(a) *References.*

- (1) AR 1-20 Legislative Liaison;
- (2) AR 20-1 Inspector General Activities and Procedures;
- (3) AR 25-1 The Army Information Management;
- (4) AR 25-11 Record Communications and the Privacy Communications System;
- (5) AR 25-400-2 The Army Records Information Management System (ARIMS);
- (6) AR 27-20 Claims;
- (7) AR 36-2 Audit Reports and Follow-up;
- (8) AR 40-66 Medical Record Administration and Health Care Documentation;
- (9) AR 40-68 Quality Assurance Administration;
- (10) AR 40-400 Patient Administration;

(11) AR 195-2 Criminal Investigation Activities;

(12) AR 25-71 The Army Privacy Program;

(13) AR 360-1 The Army Public Affairs Program;

(14) AR 380-5 Department of the Army Information Security Program;

(15) AR 381-10 U.S. Army Intelligence Activities;

(16) AR 381-12 Subversion and Espionage Directed Against The U.S. Army (SAEDA);

(17) AR 381-20 The Army Counterintelligence Program;

(18) AR 530-1 Operations Security (OPSEC);

(19) AR 600-85 Army Substance Abuse Program; and

(20) AR 608-18 The Army Family Advocacy Program.

(b) *Related publications.* A related publication is merely a source of additional information. The user does not have to read it to understand this part.

(1) AR 10-5 Headquarters, Department of the Army;

(2) AR 27-10 Military Justice;

(3) AR 27-40 Litigation;

(4) AR 27-60 Intellectual Property;

(5) AR 60-20 Army and Air Force Exchange Service Operating Policies AFR 147-14;

(6) AR 70-31 Standards for Technical Reporting;

(7) AR 190-45 Law Enforcement Reporting;

(8) AR 380-10 Foreign Disclosure and Contacts with Foreign Representatives;

(9) AR 381-45 Investigative Records Repository;

(10) AR 385-40 Accident Reporting and Records;

(11) DA Pam 25-30 Consolidated Army Publications and Index Forms;

(12) DA Pam 25-51 The Army Privacy Program—System of Records Notices and Exemption Rules;

(13) DoD Directive 5100.3 Support of the Headquarters of Combatant and Subordinate Joint Commands, November 15, 1999;

(14) DoD Directive 5230.24 Distribution Statements on Technical Documents, March 18, 1987;

(15) DoD Directive 5230.25 Withholding of Unclassified Technical Data From Public Disclosure, November 6, 1984;

(16) DoD Directive 5230.9 Clearance of DoD Information for Public Release, April 9, 1996;

(17) DoD Directive 5400.4 Provision of Information to Congress, January 30, 1978;

(18) DoD Directive 5400.7 DoD Freedom of Information Act (FOIA) Program, September 29, 1997;

(19) DoD Directive 5400.11 DOD Privacy Program, December 13, 1999;

(20) DoD Directive 7650.1 Government Accountability Office (GAO) and Comptroller General Access to Records, September 11, 1997;