

**§ 701.55**

determining how to conduct, and subsequently executing the search will be recorded as part of the computer search.

(3) *Duplication.*

Type	Cost
Aerial photograph, maps, specifications, permits, charts, blueprints, and other technical engineering documents .....	\$2.50
Engineering data (microfilm):	
Aperture cards:	
Silver duplicate negative, per card .....	.75
When key punched and verified, per card .....	.85
Diaz duplicate negative, per card .....	.65
When key punched and verified, per card .....	.75
35mm roll film, per frame .....	.50
16mm roll film, per frame .....	.45
Paper prints (engineering drawings), each .....	1.50
Paper reprints of microfilm indices, each .....	.10

(4) *Review time.*

Type	Grade	Hourly rate
Clerical .....	E9/GS8 and below .....	\$13.25
Clerical Minimum Charge .....	E9/GS8 and below .....	8.30
Professional .....	01 to 06/GS9 to GS15 .....	(*)
Executive .....	07/GS16/ES1 or higher .....	(*)

\* Rate to be established at actual hourly rate prior to search. (A minimum charge will be established at 1/2 Minimum Charge)

(5) *Other technical data records.*

Charges for any additional services not specifically provided in paragraph (d) of this section, consistent with Volume 11A of DoD 7000.14-R (NOTAL) shall be made by DON activities at the following rates:

- Minimum charge for office copy up to six images—\$3.50
- Each additional image—\$.10
- Each typewritten page—\$3.50
- Certification and validation with seal, each—\$5.20
- Hand-drawn plots and sketches, each hour or fraction Thereof—\$12.00

**§ 701.55 Processing FOIA fee remittances.**

(a) Payments for FOIA charges, less fees assessed for technical data or by a Working Capital Fund or a Non-Appropriated Fund (NAF) activity, shall be made payable to the U.S. Treasurer and deposited in Receipt Account Number 172419.1203.

(b) Payments for fees assessed for technical data shall be made payable to the DON activity that incurred the

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costs and will be deposited directly into the accounting line item from which the costs were incurred.

(c) Payments for fees assessed by Working Capital Fund or Non-Appropriated Fund (NAF) activities shall be made payable to the DON activity and deposited directly into their account.

**Subpart D—FOIA Exemptions**

**§ 701.56 Background.**

The FOIA is a disclosure statute whose goal is an informed citizenry. Accordingly, records are considered to be releasable, unless they contain information that qualifies for withholding under one or more of the nine FOIA exemptions. The exemptions are identified as 5 U.S.C. 552 (b)(1) through (b)(9).

**§ 701.57 Ground rules.**

(a) *Identity of requester.* In applying exemptions, the identity of the requester and the purpose for which the record is sought are irrelevant with the exception that an exemption may not be invoked where the particular interest to be protected is the requester's interest. However, if the subject of the record is the requester for the record and the record is contained in a Privacy Act system of records, it may only be denied to the requester if withholding is both authorized in systems notice and by a FOIA exemption.

(b) *Reasonably segregable.* Even though a document may contain information which qualifies for withholding under one or more FOIA exemptions, FOIA requires that all "reasonably segregable" information be provided to the requester, unless the segregated information would have no meaning. In other words, redaction is not required when it would reduce the balance of the text to unintelligible gibberish.

(c) *Discretionary release.* A discretionary release of a record to one requester shall prevent the withholding of the same record under a FOIA exemption if the record is subsequently requested by someone else. However, a FOIA exemption may be invoked to withhold information that is similar or related that has been the subject of a discretionary release.

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(d) *Initial Denial Authority (IDA) actions.* The decision to withhold information in whole or in part based on one or more of the FOIA exemptions requires the signature of an IDA. See listing of IDAs in § 701.4.

### § 701.58 In-depth analysis of FOIA exemptions.

An in-depth analysis of the FOIA exemptions is addressed in the DOJ's annual publication, "Freedom of Information Act Guide & Privacy Act Overview." A copy is available on the DOJ's FOIA website (see Navy FOIA website at <http://www.ogc.secnav.hq.navy.mil/foia/index.html> for easy access).

### § 701.59 A brief explanation of the meaning and scope of the nine FOIA exemptions.

(a) 5 U.S.C. 552 (b)(1): Those properly and currently classified in the interest of national defense or foreign policy, as specifically authorized under the criteria established by Executive Order and implemented by regulations.

(1) Although material is not classified at the time of the FOIA request, a classification review may be undertaken to determine whether the information should be classified based on the Executive Order on classification (*i.e.*, Executive Order 12958) and/or a security classification guide. The procedures for reclassification are addressed in the Executive Order.

(2) If the information qualifies as exemption (b)(1) information, there is no discretion regarding its release. In addition, this exemption shall be invoked when the following situations are apparent:

(i) *Glomar response:* The fact of the existence or nonexistence of a record would itself reveal classified information. In this situation, DON activities shall neither confirm nor deny the existence or nonexistence of the record being requested. A "refusal to confirm or deny" response must be used consistently, not only when a record exists, but also when a record does not exist. Otherwise, the pattern of using a "no record" response when a record does not exist, and a "refusal to confirm or deny" when a record does exist will itself disclose national security information.

(ii) *Compilation:* Compilations of items of information that are individually unclassified may be classified if the compiled information reveals additional association or relationship that meets the standard for classification under an existing executive order for classification and is not otherwise revealed in the individual items of information.

(b) 5 U.S.C. 552 (b)(2): Those related solely to the internal personnel rules and practices of the DON and its activities. This exemption is entirely discretionary and has two profiles, high (b)(2) and low (b)(2):

(1) High (b)(2) are records containing or constituting statutes, rules, regulations, orders, manuals, directives, instructions, and security classification guides, the release of which would allow circumvention of these records thereby substantially hindering the effective performance of a significant function of the DON. For example:

(i) Those operating rules, guidelines, and manuals for DON investigators, inspectors, auditors, or examiners that must remain privileged in order for the DON activity fulfill a legal requirement;

(ii) Personnel and other administrative matters, such as examination questions and answers used in training courses or in the determination of the qualifications of candidates for employment, entrance on duty, advancement, or promotion;

(iii) Computer software, the release of which would allow circumvention of a statute or DON rules, regulations, orders, manuals, directives, or instructions. In this situation, the use of the software must be closely examined to ensure a circumvention possibility exists.

(2) Discussion of low (b)(2) is provided for information only, as DON activities may not invoke the low (b)(2). Low (b)(2) records are those matters which are trivial and housekeeping in nature for which there is no legitimate public interest or benefit to be gained by release, and it would constitute an administrative burden to process the request in order to disclose the records. Examples include rules of personnel's use of parking facilities or regulation of lunch hours, statements of policy as