

SUBCHAPTER N—FREEDOM OF INFORMATION ACT PROGRAM

PART 285—DOD FREEDOM OF INFORMATION ACT (FOIA) PROGRAM

- Sec.
285.1 Purpose.
285.2 Applicability and scope.
285.3 Policy.
285.4 Responsibilities.
285.5 Information requirements.

AUTHORITY: 5 U.S.C. 552.

SOURCE: 72 FR 71793, Dec. 19, 2007, unless otherwise noted.

§ 285.1 Purpose.

This part:

- (a) Updates policies and responsibilities for implementing the DoD FOIA Program in accordance with 5 U.S.C. 552 (commonly known as the “FOIA”).
- (b) Continues to authorize 32 CFR part 286 to implement the FOIA Program.
- (c) Implements E.O. 13392 within the Department of Defense.
- (d) Continues to delegate authorities and responsibilities for the effective administration of the FOIA Program consistent with DoD Directive 5105.53¹.

§ 285.2 Applicability.

This part applies to:

- (a) The Office of the Secretary of Defense (OSD), the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities in the Department of Defense (hereafter referred to collectively as the “DoD Components”).
- (b) National Security Agency/Central Security Service records, unless the records are exempt according to 50 U.S.C. 402.
- (c) Defense Intelligence Agency, National Reconnaissance Office, and National Geospatial-Intelligence Agency

¹Copies of DoD Directives, Instructions, and Publications may be obtained at <http://www.dtic.mil/whs/directives/>.

records, unless the records are exempt according to 50 U.S.C. 403-5e, 10 U.S.C. 424 and 455, or other applicable law.

§ 285.3 Policy.

It is DoD policy to:

- (a) Promote public trust by making the maximum amount of information available to the public, in both hard copy and electronic formats, on the operation and activities of the Department of Defense, consistent with the DoD responsibility to protect national security and other sensitive DoD information.
- (b) Allow a requester to obtain records from the Department of Defense that are available through other public information services without invoking the FOIA.
- (c) Make available, according to the procedures established by DoD 32 CFR part 286, DoD records requested by a member of the public who explicitly or implicitly cites the FOIA.
- (d) Answer promptly all other requests for DoD information and records under established procedures and practices.
- (e) Release DoD records to the public unless those records are exempt from disclosure as outlined in 5 U.S.C. 552.
- (f) Process requests by individuals for access to records about themselves contained in a Privacy Act system of records according to the procedures set forth in 32 CFR part 310 and this part, as amplified by DoD 32 CFR part 286.
- (g) Provide FOIA requesters with citizen-centered ways to learn about the FOIA process, about DoD records that are publicly available, and about the status of a FOIA request and appropriate information about the DoD response.

§ 285.4 Responsibilities.

- (a) The Director, Administration and Management (DA&M) shall:
- (1) Serve as the DoD Chief FOIA Officer in accordance with E.O. 13392.
- (2) Direct and oversee the DoD FOIA Program to ensure compliance with the

§ 285.5

32 CFR Ch. I (7–1–13 Edition)

policies and procedures that govern administration of the program.

(3) Designate the FOIA Public Liaisons for the Department of Defense in accordance E.O. 13392. The FOIA Public Liaisons for OSD, the Office of the Chairman of the Joint Chiefs of Staff, and the Combatant Commands shall be appointed from the Defense Freedom of Information Policy Office (DFOIPO).

(4) Prepare and submit to the Attorney General the DoD Annual Freedom of Information Act Report as required by 5 U.S.C. 552 and other reports as required by E.O. 13392.

(5) Serve as the appellate authority for appeals to the decisions of the respective Initial Denial Authorities within OSD, the Office of the Chairman of the Joint Chiefs of Staff, the DoD Field Activities (listed in DoD 32 CFR part 286), and the Combatant Commands. The DA&M may delegate this responsibility to an appropriate member of the DA&M or Washington Headquarters Services (WHS) staff.

(6) Prepare and maintain a DoD issuance and other discretionary information to ensure timely and reasonably uniform implementation of the FOIA in the Department of Defense.

(b) The Director, WHS, under the authority, direction, and control of the DA&M, shall administer the FOIA Program, inclusive of training, for OSD and the Office of the Chairman of the Joint Chiefs of Staff.

(c) The General Counsel of the Department of Defense shall:

(1) Provide uniformity in the legal interpretation of this part.

(2) Ensure affected OSD legal advisors, public affairs officers, and legislative affairs officers are aware of releases through litigation channels that may be of significant public, media, or Congressional interest or of interest to senior DoD officials.

(3) Establish procedures to centralize processing of FOIA litigation documents when deemed necessary.

(d) The Under Secretary of Defense for Intelligence shall establish uniform procedures regarding the declassification of national security information made pursuant to requests invoking the FOIA.

(e) The Heads of the DoD Components shall:

(1) Internally administer the DoD FOIA Program; publish any instructions necessary for the administration of this part within their Components that are not prescribed by this part or by other DA&M issuances in the FEDERAL REGISTER.

(2) Serve as, or appoint another Component official as, the FOIA appellate authority for the Component.

(3) Establish one or more FOIA Requester Service Centers as prescribed by E.O. 13392.

(4) Submit names of personnel to the DA&M for designation as FOIA Public Liaisons.

(5) Ensure their respective chains of command, affected legal advisors, public affairs officers, and legislative affairs officers are aware of releases through the FOIA, inclusive of releases through litigation channels, that may be of significant public, media, or Congressional interest or of interest to senior DoD officials.

(6) Conduct training on the provisions of this part, 5 U.S.C. 552, and DoD 32 CFR part 286 for officials and employees who implement the FOIA.

(7) Submit to DFOIPO inputs to the DoD FOIA Annual Report prescribed in DoD 32 CFR part 286 and E.O. 13392.

(8) Make the records specified in 5 U.S.C. 552(a)(2) unless such records are published and copies are offered for sale, available for public inspection and copying in an appropriate facility or facilities according to rules published in the FEDERAL REGISTER. These records shall be made available to the public in both hard copy and electronic formats.

(9) Maintain and make current indices of all records available for public inspection and copying as required by 5 U.S.C. 552(a)(2).

§ 285.5 Information requirements.

Reporting requirements are in DoD 32 CFR part 286 and have been assigned Report Control Symbol DD-DA&M(A)1365 in accordance with DoD 8910.1-M.

PART 286—DOD FREEDOM OF INFORMATION ACT PROGRAM REGULATION

Subpart A—General Provisions

- Sec.
286.1 Purpose and applicability.
286.2 DoD public information.
286.3 Definitions.
286.4 Policy.

Subpart B—FOIA Reading Rooms

- 286.7 Requirements.
286.8 Indexes.

Subpart C—Exemptions

- 286.11 General provisions.
286.12 Exemptions.

Subpart D [Reserved]

Subpart E—Release and Processing Procedures

- 286.22 General provisions.
286.23 Initial determinations.
286.24 Appeals.
286.25 Judicial actions.

Subpart F—Fee Schedule

- 286.28 General provisions.
286.29 Collection of fees and fee rates.
286.30 Collection of fees and fee rates for technical data.

Subpart G—Reports

- 286.33 Reports control.

Subpart H—Education and Training

- 286.36 Responsibility and purpose.
APPENDIX A TO PART 286—COMBATANT COMMANDS—PROCESSING PROCEDURES FOR FOIA APPEALS
APPENDIX B TO PART 286—ADDRESSING FOIA REQUESTS
APPENDIX C TO PART 286—DD FORM 2086, “RECORD OF FREEDOM OF INFORMATION (FOI) PROCESSING COST”
APPENDIX D TO PART 286—DD FORM 2086-1, “RECORD OF FREEDOM OF INFORMATION (FOI) PROCESSING COST FOR TECHNICAL DATA”
APPENDIX E TO PART 286—DD FORM 2564, “ANNUAL REPORT FREEDOM OF INFORMATION ACT”
APPENDIX F TO PART 286—DOD FREEDOM OF INFORMATION ACT PROGRAM COMPONENTS
AUTHORITY: 5 U.S.C. 552.

SOURCE: 63 FR 65420, Nov. 25, 1998, unless otherwise noted.

Subpart A—General Provisions

§ 286.1 Purpose and applicability.

(a) *Purpose.* This part provides policies and procedures for the DoD implementation of the Freedom of Information Act, as amended (5 U.S.C. 552), and DoD Directive 5400.7,¹ and promotes uniformity in the DoD Freedom of Information Act (FOIA) Program.

(b) *Applicability.* This part applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Chairman of the Joint Chiefs of Staff, the Combatant Command, the Inspector General of the Department of Defense (IG DoD), the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as “the DoD components”). This part takes precedence over all DoD Component publications that supplement and implement the DoD FOIA Program. A list of DoD Components is at appendix F.

§ 286.2 DoD public information.

(a) *Public information.* (1) The public has a right to information concerning the activities of its Government. DoD policy is to conduct its activities in an open manner and provide the public with a maximum amount of accurate and timely information concerning its activities, consistent always with the legitimate public and private interests of the American people. A record requested by a member of the public who follows rules established by proper authority in the Department of Defense shall not be withheld in whole or in part unless the record is exempt from mandatory partial or total disclosure under the FOIA. As a matter of policy, DoD Components shall make discretionary disclosures of exempt records or information whenever disclosure would not foreseeably harm an interest protected by a FOIA exemption, but this policy does not create any right enforceable in court. In order that the public may have timely information concerning DoD activities, records requested through public information

¹Copy may be viewed via internet at <http://web7.whs.osd.mil/corres.htm>.