

§ 222.5

32 CFR Ch. I (7–1–13 Edition)

(2) Appoint an appellate authority to adjudicate MDR appeals for the Component.

§ 222.5 MDR processing procedures.

(a) *General.* The DoD Components shall process MDR requests from the public for classified information originating within the DoD Component in accordance with DoD 5200.1-R and 32 CFR part 2001.

(b) Information not subject to review for public release under the MDR includes:

(1) Unclassified information (to include documents) or previously classified documents that are declassified prior to the receipt of the MDR request. These documents must be requested under the provisions of 5 U.S.C. 552(b) (also known and hereinafter referred to as the “Freedom of Information Act” (FOIA) and 32 CFR part 286.

(2) Information (to include documents) reviewed for declassification within 2 years preceding the date of receipt of the MDR request. If this is the case, the requester shall be provided the documents as previously released and advised of the right to appeal to the DoD Component within 60 days unless the documents are already under appeal to the Interagency Security Classification Appeals Panel (ISCAP).

(3) Information exempted from search and review by statute of 50 U.S.C. 431, 432, 432a, 432b, and 432d.

(4) Documents originated by the incumbent President; the incumbent President’s White House Staff; committees, commissions, or boards appointed by the incumbent President; or other entities within the Executive Office of the President that solely advise and assist the incumbent President.

(5) Information marked as Restricted Data or Formerly Restricted Data.

(6) Information that is the subject of pending litigation.

(c) *MDR Requester Guidelines.* Members of the public seeking the declassification of DoD documents under the provisions of section 3.5 of Executive Order 13526, and 50 U.S.C. 431, 432, 432a, 432b, and 432d shall:

(1) Address the written request to the appropriate DoD Component listed in the appendix to this enclosure.

(2) Identify the requested document or information with sufficient specificity to enable the DoD Component to locate it with a reasonable amount of effort. Information that would provide the sufficient specificity would include a document identifier such as originator, date, title, subject, the National Archives and Records Administration accession number, or other applicable unique document identifying number. Broad or topical MDR requests for records on a particular subject, such as “any and all documents concerning” a subject do not meet this standard.

(3) Include a correct return mailing address with the request.

(4) Include a statement that the requester understands that the request may incur processing charges in accordance with paragraph (k) of this section.

(d) *Receipt and Control.* Upon receipt of an MDR request, the DoD Component shall send the requester an acknowledgement and open a file in a formal control system. The acknowledgement shall include the tracking number and date of receipt of the request.

(e) *Simultaneous MDR and FOIA Requests.* DoD Components should be aware of possible requests under both the MDR and the FOIA. In accordance with 32 CFR part 286, if a requester asks for the same information under the FOIA and the MDR, the DoD Component shall ask the requester to select only one process. If the requester does not select a process, the DoD Component shall process the requested information under the FOIA.

(f) *MDR Document Review Process.* (1) Requests normally will be processed on a first in first out basis by date of receipt.

(2) Every effort shall be made to ensure that a response to an MDR request is provided to the requester within 1 year from the date of receipt.

(3) The DoD Components shall conduct line-by-line reviews of documents responsive to an MDR request to determine if the information contained within the documents continues to adhere to the standards for classification according to Executive Order 13526 Classified National Security Information. This line-by-line review must

take into account the unique sensitivity of FGI as outlined in paragraph (h) of this section. In accordance with section 3.6(b) of Executive Order 13526 Classified National Security Information, classified information originating with another U.S. Government agency contained in records of the DoD Components will be referred to the originating agency for a declassification and release determination. Likewise, classified information in a DoD Component's records originating with another DoD Component will be referred to the originating Component. It is the responsibility of the DoD Component originally receiving the MDR request to manage these referrals and to incorporate the other agency's or DoD Component's determinations when preparing the final decision on the request. The review of each document will determine if the document:

(i) No longer meets the standards for classification as established by Executive Order 13526 "Classified National Security Information", and is therefore declassified in full.

(ii) Contains portions still meeting the standards for classification and is therefore declassified in part and denied in part.

(iii) Still meets the standards for classification in its entirety and is therefore denied in full.

(4) For documents meeting the criteria of paragraphs (f)(3)(i) and (f)(3)(ii) of this section, the DoD Components shall not release any unclassified information exempt from public release pursuant to Exemptions 2 through 9 of the FOIA. DoD 5400.7-R, "DoD Freedom of Information Act Program" provides a more detailed explanation of the FOIA exemptions.

(5) When this process is complete, the DoD Components shall redact all information, both classified and unclassified, determined to be exempt from release as warranted under applicable law and authority. All of the remaining information within the documents, which is determined to be publicly releasable information, shall be provided promptly to the requester.

(g) *Public Access.* In the interest of transparency, the DoD Components should make efforts to post documents

released under the MDR program on DoD Component Web sites.

(h) *FGI.* Every effort must be made to ensure that FGI is not subject to declassification without the prior consent of the originating government. Therefore, if a requested document originated with a foreign government or organization and was classified by that government or organization, the DoD Component shall conduct MDR of the document in accordance with DoD 5200.1-R and 32 CFR part 2001.

(i) *Denial of Information.* (1) When classified information is denied, the DoD Component shall advise the requester, in writing:

(i) That information currently and properly classified has been denied (whether a document in its entirety or partially) in accordance with the appropriate sections of Executive Order 13526 Classified National Security Information.

(ii) Of the right to appeal the denial to the DoD Component within 60 days of receipt of the denial.

(iii) Of the mailing address for the appellate authority.

(2) When unclassified information is withheld because it is determined to be exempt from release pursuant to Exemptions 2 through 9 of the FOIA (whether or not classified information was also withheld within the same document), the DoD Component shall advise the requester that:

(i) Section 3.5(c) of Executive Order 13526 Classified National Security Information allows for the denial of information when withholding it is authorized and warranted under applicable law.

(ii) Unclassified information exempt from public release pursuant to one or more exemptions of the FOIA has been withheld.

(3) For the denial of unclassified information, the requester shall not be given MDR appeal rights because the MDR applies only to the denial of classified information and because the request was not processed under the FOIA.

(4) The DoD Component is not required to confirm or deny the existence or nonexistence of requested information whenever the fact of its existence

or nonexistence is itself classified pursuant to Executive Order 13526 Classified National Security Information.

(j) *MDR Appeals*. MDR appeals are for the denial of classified information only. DoD Components shall make an appellate decision within 60 working days of receipt of an MDR appeal. If additional time is required to make a determination, the appellate authority shall notify the requester of the additional time needed and provide the requester with the reason for the extension. When the appellate review is complete, the appellate authority shall notify the requester in writing of the final determination and of the reasons for any denial. If the appellate authority determines that some information remains classified under the provisions of Executive Order 13526 Classified National Security Information, the requester will be advised of the right to appeal the final decision to the ISCAP within 60 days of the final Component decision, in accordance with section 5.3 of Executive Order 13526 Classified National Security Information.

(k) *FEES*. In responding to MDR requests, the DoD Components may charge fees as permitted by 32 CFR Part 2001. Fees for search, review, and reproduction shall be in accordance with the fee schedule in Appendix 2 of Chapter 4 of Volume 11A of DoD 7000.14-R (available at http://comptroller.defense.gov/fmr/11a/11a_04.pdf).

[76 FR 80745, Dec. 27, 2011; 77 FR 745, Jan. 6, 2012]

APPENDIX A TO PART 222—ADDRESSING MDR REQUESTS

(a) *General*. The Department of Defense does not have a central repository for DoD records. MDR requests therefore should be addressed to the DoD Component that has custody of the requested record. If a requester is not sure which DoD Component has custody or if the DoD Component is not listed below, the MDR request should be directed to the Washington Headquarters Services in paragraph (b)(1) of this appendix.

(b) *DoD Component MDR Addresses*:

(1) *OSD and the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff*. Department of Defense, Washington Headquarters Services, Records and Declassification Division, Suite 02F09-02, 4800 Mark Center Drive, Alexandria, VA 22350-3100. EXCEPTION: DoD Inspector General. DoD Office of

Inspector General, 400 Army Navy Drive, Arlington, VA 22202-4704.

(2) *Department of the Army*. U.S. Army Declassification Activity, Attention: AHRC-RDD, 8850 Richmond Highway, Suite 300, Alexandria, VA 22309.

(3) *Department of the Navy*.

(i) Department of the Navy, Chief of Naval Operations, CNO N09N2, 2000 Navy Pentagon, Washington, DC 20350-2000. (Collateral MDR).

(ii) Department of the Navy, Chief of Naval Operations, CNO N2/N6, 2000 Navy Pentagon, Washington, DC 20350-2000. (Sensitive Compartmented Information MDR).

(4) *Department of the Air Force*. Department of the Air Force, HAF/IMIO (MDR), 1000 Air Force Pentagon, Washington, DC 20330-1000.

(5) *United States Marine Corps*. Commandant of the Marine Corps, HQMC Code PP&O, Security Division (PS), 3000 Marine Corps Pentagon, Room 4A324, Washington, DC 20350-3000

(6) *Defense Advanced Research Projects Agency*. Defense Advanced Research Projects Agency, 3701 N. Fairfax Drive, Arlington, VA 22203-1714.

(7) *Defense Contract Audit Agency*. Director, Defense Contract Audit Agency, Attention: CPS, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060-6219.

(8) *Defense Information Systems Agency*. Defense Information Systems Agency, Attention: Security Division, MPS 6, 5111 Leesburg Pike, Suite 100, Falls Church, VA 22041.

(9) *Defense Intelligence Agency*. Defense Intelligence Agency, Attention: DAN-1A (FOIA), Washington, DC 20340-5100.

(10) *Defense Logistics Agency*. Defense Logistics Agency, Attention: DLA/DSS-S, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060-6221.

(11) *Defense Security Service*. Defense Security Service, Office of FOIA & Privacy, 1340 Braddock Place, Alexandria, VA 22314-1651.

(12) *Defense Threat Reduction Agency*. Defense Threat Reduction Agency, Attention: SCR 8725 John J. Kingman Road, Fort Belvoir, VA 22060-6201.

(13) *Missile Defense Agency*. Missile Defense Agency, Attention: MDA/DS, 7100 Defense Pentagon, Washington, DC 20301-7100.

(14) *National Geospatial-Intelligence Agency*. National Geospatial-Intelligence Agency, Mail Stop D-10, 4600 Sangamore Road, Bethesda, MD 20816-5003.

(15) *National Reconnaissance Office*. National Reconnaissance Office, NRO-MSO-ASG-IMSC-IART, 14675 Lee Road, Chantilly, VA 20151-1715.

(16) *National Security Agency/Central Security Service*. National Security Agency, Declassification Office, DJP5, 9800 Savage Road, Suite 6884, Fort George G. Meade, MD 20755-6884.

(17) *North American Aerospace Defense Command*. HQ NORAD/CSO, 250 Vandenberg St. Ste B016, Peterson AFB, CO 80914.