

harm to the competitive position of the source providing the information, impair the Government's ability to obtain necessary information in the future, or impair some other legitimate Governmental interest.

(2) When a request is received for a record that was obtained or provided by a non-U.S. Government source, the source of the record or information (also known as "the submitter" for matters pertaining to proprietary data) shall be notified promptly of that request and afforded reasonable time (e.g. 30 calendar days) to present any objections concerning the release, unless it is clear that there can be no valid basis for objection. This practice is required for those FOIA requests for data not deemed clearly exempt from disclosure under Exemption (b)(4). For further guidance, see DoD 5400.7-R, paragraph 5-207.

(e) *Exemption (b)(5)*. Those concerning internal advice, recommendations, and subjective evaluations, as contrasted with factual matters, that are reflected in records pertaining to the decision-making process of an agency, whether within or among agencies or within or among DoD components. Also exempted are records pertaining to the attorney-client privilege and the attorney work-product privilege.

(f) *Exemption (b)(6)*. Information in personnel and medical files, as well as similar personal information in other files, that, if disclosed to the requester, would result in a clearly unwarranted invasion of personal privacy. Release of information about an individual contained in a Privacy Act system of records that would constitute a clearly unwarranted invasion of privacy is prohibited, and could subject the releaser to civil and criminal penalties.

(g) *Exemption (b)(7)*. Records or information compiled for the purpose of enforcing civil, criminal, or military law, including the implementation of Executive Orders or regulations issued pursuant to law, but only to the extent that the production of such law enforcement records or information

(1) Could reasonably be expected to interfere with enforcement proceedings.

(2) Would deprive a person of a right to a fair trial or an impartial adjudication.

(3) Could constitute an unwarranted invasion of the personal privacy of others (also see DoD 5400.7-R, paragraph 3-200, Number 7 a. 3. (a)-(c)).

(4) Could disclose the identity of a confidential source.

(5) Would disclose investigative techniques and procedures, or

(6) Could endanger the life or physical safety of law enforcement personnel. This exemption may be invoked to prevent disclosure of documents not originally created for, but later gathered for, law enforcement purposes.

§ 292.7 Filing an appeal for refusal to make records available.

(a) A requester may appeal an initial decision to withhold a record. Further, if a requester determines a "no record" response in answer to a request to be adverse, this determination may also be appealed. Appeals should be addressed to: Defense Intelligence Agency, ATTN: DSP-1A (FOIA), Washington, DC 20340-3299.

(b) The requester shall be advised that the appellate authority must receive an appeal no later than 60 calendar days after the date of the initial denial letter.

(c) Final determination on appeals normally will be made within 20 working days of receipt of the appeal at the above address. If additional time is needed to decide the appeal because of unusual circumstances, the final determination may be delayed for the number of working days, not to exceed 10, which were not utilized as additional time for responding to the initial request. Appeals shall be processed in order of receipt. However, this does not preclude DIA from completing action on an appeal request which can easily be answered, regardless of its ranking within the order of receipt. DIA may expedite action on an appeal request regardless of its ranking within the order of receipt upon a showing of exceptional need or urgency. Exceptional need or urgency is determined at the discretion of DIA.

(d) When an appeal is denied, the requester will be apprised of the following:

§ 292.8

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(1) The basis for the refusal shall be explained to the requester, in writing, identifying the applicable statutory exemption or exemptions invoked under provisions of this part.

(2) When the final refusal is based in whole or in part on a security classification, the explanation shall include a determination that the record meets the criteria and rationale of the governing Executive Order, and that this determination is based on a declassification review.

(3) The final denial shall include the name and title or position of the official responsible for the denial.

(4) The response shall advise the requester with regard to denied information whether or not any reasonably segregable portions were found.

(5) The response shall advise the requester of the right to judicial review.

§ 292.8 Responsibilities.

When a request for information or records is received, the following will apply:

(a) *DSP-1A*. (1) Receives requests and assigns tasking.

(2) Maintains appropriate suspenses and authorizes all extensions of response time.

(3) Acts as the responsible operating office for all Agency actions related to the FOIA.

(4) Drafts and transmits responses on:

(i) The release of records and/or information.

(ii) Obtaining supplemental information from the requester.

(iii) Informing the requester of any fees required.

(iv) The transfer to another element or agency of the initial request.

(5) Fulfills the annual reporting requirement and maintains appropriate records.

(6) Acts as the responsible official for all initial denials of access to the public.

(b) All DIA elements:

(1) When identified by *DSP-1A* as the Office of Primary Responsibility (OPR) will:

(i) Search files for any relevant records, and/or

(ii) Review records for possible public release within the time constraints assigned, and

(iii) Prepare a documented response in any case of nonrelease.

(2) All employees are required to read this part to ensure familiarity with the requirements of the FOIA as implemented.

(c) *The General Counsel*. (1) Ensures uniformity in the FOIA legal positions within the DIA and with the Department of Defense.

(2) Secures coordination when necessary with the General Counsel, DoD, on denials of public requests.

(3) Acts as the focal point in all judicial actions.

(4) Reviews all final denials.

(d) The Director, and on his behalf, the Chief of Staff:

(1) Exercises overall staff supervision of the FOIA activities of the Agency.

(2) Acts as the responsible official for all denials of appeals.

APPENDIX A TO PART 292—UNIFORM AGENCY FEES FOR SEARCH AND DUPLICATION UNDER THE FREEDOM OF INFORMATION ACT (AS AMENDED)

Search + Review (only in the case of commercial requesters)

a. Manual search or review—

Type	Grade	Hourly rate
Clerical	E9/GG-08 and below	\$12.00
Professional	O1-06/GG-09-GG-15	25.00
Executive	O7/GG-16/ES1 and above	45.00

b. Computer search is based on direct cost of the central processing unit, input-output devices, and memory capacity of the actual computer configuration. The salary scale (equating to paragraph a. above) for the computer/operator/programmer determining how to conduct and subsequently executing the search will be recorded as part of the computer search.

c. Actual time spent travelling to a search site, conducting the search and return may be charged as FOIA search costs.

General

Pre-Printed material, per printed page

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Office copy, per page15
Microfiche, per page25

Aerial Photography Reproduction

Per Print	\$2.50
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