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PART 300—DEFENSE LOGISTICS AGENCY FREEDOM OF INFORMATION ACT PROGRAM

Subpart A—General Provisions

- Sec.
300.1 Purpose.
300.2 DLA FOIA regulatory precedence.
300.3 Definitions.
300.4 Policy.

Subpart B—Exemptions

- 300.5 General.

Subpart C—FOIA Request Processing

- 300.6 General.
300.7 FOIA request processing procedures.
300.8 Initial determinations.
300.9 Appeals.
300.10 Judicial actions.

Subpart D—Fees and Fee Waivers

- 300.11 General.

APPENDIX A TO PART 300—ACCESS TO DLA RECORDS

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Subpart A—General Provisions

§ 300.1 Purpose.

This part provides policies and procedures for the Defense Logistics Agency (DLA) implementation of the Freedom of Information Act (FOIA) (5 U.S.C. 552). This part supplements and implements the Department of Defense (DoD) FOIA Program Directive (32 CFR part 285) and DoD FOIA Program Regulation (32 CFR part 286). This part applies to DLA Components and takes precedence over all DLA regulations that supplement the FOIA program.

§ 300.2 DLA FOIA regulatory precedence.

This part is published in accordance with the authority contained in 5 U.S.C. 552 and 32 CFR parts 285 and 286. It supplements 32 CFR part 286 to ac-

commodate specific requirements of DLA's FOIA Program. For all FOIA issues not covered by this part, the rules set forth in 32 CFR part 286 will govern.

§ 300.3 Definitions.

Definitions not included in this subpart may be found in 32 CFR part 286, subpart A. The following terms and meanings apply for the purposes of this part:

(a) *Administrative appeal*. A written request by a member of the public, made under the FOIA, to DLA's Appellate Authority requesting reversal of an adverse determination. An appeal may be mailed, emailed to *hq-foia@dla.mil*, or faxed to 703-767-6091. Appeals are to be addressed to the Appellate Authority, Defense Logistics Agency, Suite 1644, 8725 John J. Kingman Road, Fort Belvoir, Virginia 22060-6221.

(b) *Adverse determination*. Adverse determinations include, but are not limited to decisions that: Withhold all or part of a requested record; deny a fee category claim by a requester; deny a request for waiver or reduction of fees; deny requesters challenge of fee estimates; denies a request for expedited processing; state that no records were located; do not provide a response within the statutory time limit; or what the requester believes is adverse in nature.

(c) *Appellate authority*. The General Counsel, DLA, who upon receipt of an administrative appeal, reviews the initial determination and may uphold, reverse or amend any adverse determination.

(d) *Consultation*. The process whereby a DoD Component receives a FOIA request for a record in which another DoD Component or Federal agency has a clear and substantial interest in the subject matter, the responsive record is sent to another DoD Component or Federal agency to obtain recommendations on the releasability of the document and is returned to the originator for further action.

(e) *Defense Freedom of Information Policy Office (DFOIPO)*. The office responsible for the formulation and implementation of DoD policy guidance for FOIA. For information about DFOIPO

refer to <http://www.dod.mil/pubs/foi/dfoipo/>.

(f) *Direct costs.* Expenditures made in searching for, reviewing, and duplicating documents in response to a FOIA request. Direct costs include, for example, the salary of the employee performing the work (the basic rate of pay plus 16 percent of that rate to cover benefits) and the costs of operating duplicating machinery. Not included in direct costs are overhead expenses such as the cost of space, heating, or lighting the facility in which the records are stored.

(1) *Search.* This term includes all time spent looking, both manually and electronically, for records that are responsive to a FOIA request, such as:

(i) Searching for responsive emails or electronic documents located on individually-assigned computers or servers;

(ii) Time taken by a programmer to create a program to run a requested report from a database; or

(iii) Searching through hardcopy files to include records stored at a Federal Records Center. The term “search” also includes a page-by-page and line-by-line identification of a record to determine if it, or portions, are responsive to the request.

(2) *Duplication.* The process of making a copy of a document in response to a FOIA request. Copies can take the form of paper, microfiche, audiovisual or machine-readable documentation (e.g., magnetic tape or compact disc), among others. Personnel time spent performing tasks to enable a computer system to output information in a particular digital form or format for a requester is considered search time. Search time is calculated according to 32 CFR part 286, subpart F.

(3) *Review.* The examination of documents located in response to a FOIA request to determine if any of the statutory exemptions permit withholding. Review also includes the time taken to redact documents, preparing them for release and reviewing submitter responses under Executive Order 12600. Review does not include the time spent resolving general legal or policy issues regarding the application of exemptions.

(g) *DLA component.* DLA Components consist of Headquarters Organizations,

Primary Level Field Activities, Defense Business Services, Regional Commands, and other Organizational entities. A description of DLA Components can be found at www.dla.mil.

(h) *DLA FOIA Requester Service Center.* DLA Office’s authorized to receive and process FOIA requests and where a FOIA requester can gain information concerning DLA’s FOIA Program, the status of the person’s FOIA request, or information about the agency’s FOIA response. Refer to Appendix A of this part for locations of FOIA Requester Service Centers or for additional information refer to DLA’s public Web site at www.dla.mil/FOIA-Privacy.

(i) *Electronic records.* Records (including email) created, stored, and retrieved by electronic means.

(j) *Federal agency.* This term is defined at 5 U.S.C. 551(1) and 5 U.S.C. 552(f)(1).

(k) *FOIA officer.* DLA employee who is responsible for processing FOIA requests and is a point of contact for the FOIA program. The FOIA Officer grants or denies requests for fee waivers or expedited processing and makes requester category determinations.

(l) *FOIA Public Liaison.* The member of DLA’s Headquarters FOIA staff to whom a FOIA requester can raise concerns about the service the requester received from a DLA FOIA Requester Service Center. The FOIA Public Liaison is available to assist in reducing delays, increasing transparency; increasing understanding of the status of requests and assists with resolving disputes.

(m) *FOIA request.* A written request for DLA records that reasonably describes the record(s) sought, enabling a DLA employee familiar with the files to locate the record(s) with a reasonable amount of effort; indicates a willingness to pay processing fees or requests a fee waiver; and includes a postal mailing address and contact information. A willingness to pay fees is not required when, based upon the request, fees will not be assessed (e.g. an “other” requester requests a document that is certain to be less than 100 pages and will take less than two hours of search time). Written requests may be received by U.S. Postal Service or other commercial delivery means, by

§ 300.4

32 CFR Ch. I (7–1–14 Edition)

facsimile, or electronically. A FOIA request meeting these conditions, arriving at DLA's FOIA Requester Service Center in possession of the requested records, is considered perfected or properly received at which time the statutory time limit for response begins. In no case shall the statutory time limit for processing a perfected request begin later than ten business days after receipt by any of DLA's FOIA Request Service Centers.

(n) *Initial denial authority (IDA)*. By this regulation, the Director, DLA, delegates to Heads of DLA Components the authority to withhold information requested under the FOIA pursuant to one or more of the nine FOIA exemptions and to confirm that no records were located in response to a request. The designation of IDA may be further delegated by the Heads of DLA Components to their Deputies. DLA Components shall limit the number of IDAs appointed. In designating its IDAs, a DLA Component shall balance the goals of centralization of authority to promote uniform decisions and decentralization to facilitate responding to each request within the time limitations of the FOIA. IDAs may also deny a fee category claim by a requester, deny a request for expedited processing, deny a request for a waiver or reduction of fees, or review a fee estimate, although these determinations are usually made by the FOIA Officer.

(o) *Referral*. The process of transferring records found in response to a FOIA request to another DLA or DoD Component, or any Federal agency for review and direct response to the requester. This process is used when documents located during a search are found to have originated or there is a substantial interest in the record with another DLA or DoD Component, or Federal agency.

(p) *Requester category*. One of three categories that agencies place requesters in for the purpose of determining fees for search, review and duplication. The three categories are:

- (1) Commercial;
- (2) Non-commercial scientific or educational institutions or news media; and
- (3) All others.

§ 300.4 Policy.

DLA adopts and supplements the DoD FOIA Program policy and procedures codified at 32 CFR part 286, subpart A, General Provisions and subpart B, FOIA Reading Rooms and 32 CFR part 285.

(a) *General*. As a matter of policy, DLA 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. The public has a right to information concerning the activities of its Government. DLA 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 DLA record requested by a member of the public who follows rules established herein shall be withheld only when it is exempt from mandatory public disclosure under the FOIA.

(b) *Customer Service*. Executive Order 13392, Improving Agency Disclosure of Information, December 14, 2005, requires agencies to emphasize a new citizen-centered approach to the FOIA that is results-oriented. Because FOIA requesters are seeking a service from the Federal Government, all DLA Components shall respond courteously and professionally to FOIA requesters. Additionally, the Components shall provide the public with information about agency records that are already publicly available, as well as information about the status of a person's FOIA request and an estimated date on which DLA's Component will complete the request. Refer to Appendix A of this part for DLA FOIA Requester Service Center contact information.

(1) To meet the requirements of Executive Order 13392, each FOIA Requester Service Center shall have an internet Web site that serves to educate the public on the FOIA process. At a minimum, each Web site shall have the address, telephone number, facsimile number, and electronic mail address to which FOIA requests can be sent; a link to DoD's FOIA handbook; the