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32 CFR Part 286

DoD Freedom of Information Act (FOIA) Program; Proposed Rule

DEPARTMENT OF DEFENSE BILLING CODE**Office of the Secretary****32 CFR Part 286**

[DoD–2007–OS–0086; 0790–AI24]

DoD Freedom of Information Act (FOIA) Program**AGENCY:** Department of Defense.**ACTION:** Proposed rule.

SUMMARY: The rule updates DoD policy and procedures that implement the Freedom of Information Act (FOIA) and incorporate the provisions of the executive order directing agencies to improve the disclosure of information. This part promotes uniformity in the DoD FOIA Program. It takes precedence over all DoD Component publications that supplement and implement the DoD FOIA Program.

DATES: Comments must be received by November 3, 2014.

FOR FURTHER INFORMATION CONTACT:

James Hogan, 571–372–0463.

SUPPLEMENTARY INFORMATION: This rule is part of DoD's retrospective plan, completed in August 2011, under Executive Order 13563, "Improving Regulation and Regulatory Review." DoD's full plan and updates can be accessed at: <http://www.regulations.gov/#!docketDetail;dt=FR+PR+N+O+SR;rpp=10;po=0;D=DOD-2011-OS-0036>.

Executive Summary*I. Purpose of This Regulatory Action*

a. This rule revises 32 CFR part 286 in accordance with the authority in 32 CFR part 285 to implement 5 U.S.C. 552 and incorporate the provisions of Executive Order 13392. This part promotes uniformity in the DoD FOIA Program.

b. Authority: The Freedom of Information Act (FOIA) (5 U.S.C. 552), as amended, provides that any person has a right, enforceable in court, to obtain access to federal agency records, except to the extent that such records (or portions of them) are protected from public disclosure by one of nine exemptions or by one of three special law enforcement record exclusions. Furthermore, the FOIA requires agency to promulgate regulations to carry out some of its provisions.

II. Summary of the Major Provisions of This Regulatory Action

This rule implements changes to conform to the requirements of the Electronic Freedom of Information Act Amendments of 1996, Public Law 104–

231, and the OPEN Government Act of 2007, Public Law 110–175.

III. Costs and Benefits of This Regulatory Action

This regulatory action imposes no monetary costs to the Agency or public. The benefit to the public is the accurate reflection of the Agency's FOIA Program to ensure that policies and procedures are known to the public.

Regulatory Procedures

Executive Order 12866, "Regulatory Planning and Review" and Executive Order 13563, "Improving Regulation and Regulatory Review"

We have consulted with the Office of Management and Budget (OMB) and determined this NPRM meets the criteria for a significant regulatory action under Executive Order 12866, as supplemented by *Executive Order 13563*, and was subject to OMB review.

Sec. 202, Public Law 104–4, "Unfunded Mandates Reform Act"

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4) requires agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of \$100 million in 1995 dollars, updated annually for inflation. This document will not mandate any requirements for State, local, or tribal governments, nor will it affect private sector costs.

Public Law 96–354, "Regulatory Flexibility Act" (5 U.S.C. 601)

It has been certified that 32 CFR part 286 is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. The rule implements the procedures for processing FOIA requests within the Department of Defense. Therefore, the Regulatory Flexibility Act, as amended, does not require us to prepare a regulatory flexibility analysis.

Public Law 96–511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)

This proposed rule do not create any new or affect any existing collections, and therefore, do not require OMB approval under the Paperwork Reduction Act

Executive Order 13132, "Federalism"

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local

governments, preempts State law, or otherwise has Federalism implications. This document will not have a substantial effect on State and local governments.

List of Subjects in 32 CFR Part 286

Freedom of information.

Accordingly, 32 CFR part 286 is proposed to be revised to read as follows:

PART 286—DOD FREEDOM OF INFORMATION ACT (FOIA) PROGRAM**Subpart A—General**

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- 286.30 Referrals and consultations.
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- 286.33 General provisions.
- 286.34 Fees for technical data.
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Subpart G—Education and Training

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Appendix A to Part 286—DoD FOIA Program Components and Addresses

Authority: 5 U.S.C. 552.

Subpart A—General**§ 286.1 Purpose.**

This part is in accordance with the authority in DoD Directive 5105.53, “Director of Administration and Management (DA&M)” (available from <http://www.dtic.mil/whs/directives/corres/pdf/510553p.pdf>) and the guidelines and responsibilities in 32 CFR part 285 to implement 5 U.S.C. 552 (also known and hereinafter referred to as “The Freedom of Information Act (FOIA), as amended”) and incorporate the provisions of Executive Order 13392. This part promotes uniformity in the DoD FOIA Program. It takes precedence over all DoD Component publications that supplement and implement the DoD FOIA Program.

§ 286.2 Applicability.

This part applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint 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 within the Department of Defense (referred to collectively in this part as the “DoD Components”).

§ 286.3 Definitions.

Unless otherwise noted, these terms and their definitions are for this part.

Administrative appeal. A request by a member of the public, made pursuant to the FOIA, asking the appellate authority of a DoD Component to reverse any adverse determination by an initial denial authority (IDA).

Adverse determination. A decision by an IDA to withhold all or part of a requested record pursuant to an exemption, deny a fee category claim by a FOIA requester, deny a request for waiver or reduction of fees, deny a request to review an initial fee estimate, deny a request for expedited processing, confirm that no records were located during the initial search, or make any determination that a FOIA requester believes is adverse in nature.

Agency record. (1) Includes all documents or records created or obtained by an agency of the Government that are in an agency’s possession and control at the time a FOIA request is received. Four factors determine an agency’s control:

- (i) The intent of the creator of the document to retain control over the record;
- (ii) The ability of the agency to use and dispose of the record as it sees fit;

(iii) The extent to which agency personnel have read or relied upon the document;

(iv) The degree to which the document was integrated into the agency’s record systems or files. Information maintained by an entity pursuant to government contract for a DoD Component for records management is considered in the DoD Component’s possession. Records created by an agency employee during employment, including emails, may be either agency records or personal files.

(A) Examples include:

(1) Research data produced during the performance of a federal grant used by the Government in developing an agency action that has the force and effect of law in accordance with OMB Circular No. A–110 (available at http://www.whitehouse.gov/omb/circulars_a110/).

(2) Books, papers, maps, photographs, machine-readable materials inclusive of those in electronic form or format, and other documentary materials, regardless of physical form or characteristics. Form or format refers to physical media type or transmission mode desired by the FOIA requester, e.g., computer disk, computer tape, file transfer protocol, photographs, videotape, and microfiche.

(B) Examples do not include:

(1) Objects or articles such as structures, furniture, vehicles, and equipment, whatever their historical value or value as evidence.

(2) Anything that is not a tangible or documentary record, such as an individual’s memory or oral communication.

(3) Personal files.

(2) The definition of an agency record under the FOIA is more expansive than the definition of a federal record. Documents such as drafts and working files need not be official records as defined as official records, but are still agency records responsive to FOIA requests.

Appellate authority. The DoD Component head, or designee, having jurisdiction to review and possibly reverse, remand, or amend any adverse determination made by an IDA. Every DoD Component listed in Appendix A to this part must have an appellate authority.

Critical Infrastructure Security Information (CISI). Defined in 10 U.S.C. 130e(c).

Commercial request. A FOIA request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interest of the FOIA requester or the person on whose behalf the FOIA request is made.

Compelling need. A state that exists when the failure to obtain requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual, or when the information is urgently needed by an individual primarily engaged in disseminating information in order to inform the public concerning actual or alleged government activity and the value of the information would be lost if it is disseminated at a later time.

Consultation. The process whereby a federal agency transfers a FOIA responsive document to another federal agency or non-government entity, in certain situations, to obtain recommendations on the releasability of the document. After review, the document is returned to the original agency for response to the FOIA requester or further review.

Deliberative information. Internal advice, recommendations, or subjective evaluations that are reflected in records relied upon in the decision-making process of an agency, whether within or among agencies.

Demonstration of a compelling need. A statement certified to be true and correct to the best of a FOIA requester’s knowledge and belief. This statement must be with the FOIA request in order for it to be considered and responded to within the 10 calendar days required for decisions on expedited access.

Direct costs. Those expenditures a DoD Component makes in searching for, reviewing, and duplicating documents to respond to a FOIA request. For example, direct costs may include 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. (These factors have been included in the fee rates prescribed in Table 1 of § 286.33.) Not included in direct costs are overhead expenses such as the cost of space, heating, or lighting the facility where the records are stored.

Duplication. The process of making a copy of a document in response to a FOIA request. Such copies can take the form of paper, microfiche, audiovisual or machine-readable documentation (e.g., magnetic tape or CD), among others. Time spent programming or querying a computer system to output information in a particular digital form or format for a FOIA requester is considered search time.

Educational institution. A pre-school, a public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education,

or an institution of vocational education that operates a program or programs of scholarly research.

Electronic records. Records (including email) created, stored, and retrievable by electronic means.

Federal agency. Defined in 5 U.S.C. 551(1) and 552(f)(1). A federal agency cannot make a FOIA request.

Fee waiver. Defined in 5 U.S.C. 552(a)(4)(A)(iii).

Final response determination. The response from the DoD Component, at the completion of the processing of an initial FOIA request, to the FOIA requester reflecting the final release determination made by the DoD Component.

FOIA Public Liaison. A supervisory official to whom a FOIA requester can raise concerns about the service the FOIA requester receives from a FOIA Requester Center, and who is responsible for assisting in reducing delays, increasing transparency and understanding of the status of requests, and assisting in the resolution of disputes. All DoD Components listed in Appendix A to this part must have a FOIA Public Liaison.

FOIA request. A written request for DoD records that reasonably describes the record(s) sought, enabling a DoD Component employee familiar with the files to locate the record(s) with a reasonable amount of effort.

(1) A commercial requester asking for contract-related documents must indicate a willingness to pay fees equal to or greater than the minimum fees established by the DoD Component for commercial requesters.

(2) Written FOIA requests may be submitted by U.S. Postal Service or other commercial delivery means, by facsimile, or electronically, to an address provided for submission of FOIA requests and must include the FOIA requester's postal mailing address. Commercial delivery is acceptable; however, due to security concerns, the DoD Components may refuse to accept commercial delivery of FOIA requests.

FOIA requester. Any person, including a partnership, corporation, association, State or State agency, foreign government, foreign national, or a lawyer or other representative acting on behalf of any person, who submits a FOIA request. This definition specifically excludes agencies within the Executive Branch of the government.

FOIA Requester Service Center. A DoD Component office that receives FOIA requests from and responds directly to the public. It also is the first place a FOIA requester can contact to seek information concerning the status of that person's FOIA request and

appropriate information about the agency's FOIA response.

Format. The storage media that hold content in digital form on which responsive information is provided to FOIA requesters. Examples are electronic documents, audiovisual material on tape, and all storage media that hold content in digital form and that are written and read by a laser; these media include all the various CD and DVD variations. Paper documents are typically an example of non-digital storage media.

Format. A pre-established layout for data. A computer program accepts data as input in a certain format, processes it, and provides it as output in the same or another format. All digital data is stored in some format with the expectation that it will be processed by a program that knows how to handle that format. Usually, data formats tend to fall into bitmaps (strings of 0s and 1s) that describe images or sound patterns (or both), text formats (where each byte value usually is mapped to a character), and numeric data formats (used by spreadsheet and other database programs). Examples include a pre-established arrangement of data for computer input or output, such as the number and size of data fields in a record or the spacing and punctuation of information in a report.

Glomar. The term applied to a type of response to a FOIA request where the DoD Component neither confirms nor denies the existence or nonexistence of records responsive to the FOIA request.

IDA. An official who has been granted authority by the DoD Component head to withhold records requested pursuant to the FOIA for one or more of the nine categories of records exempt from mandatory disclosure. An IDA may also deny a fee category claim by a FOIA requester, deny a request for expedited processing, deny a request for a waiver or reduction of fees, review a fee estimate, and confirm that no records were located in response to a FOIA request.

Individual primarily engaged in disseminating information. A person or entity whose primary activity involves publishing or otherwise disseminating information to the public. To qualify, a person or entity must establish that information dissemination is their principal professional activity or occupation, and not an incidental or secondary activity.

Military Flight Operations Quality Assurance (MFOQA) system data file. Defined in 10 U.S.C. 2254(a)(2).

Misdirected FOIA request. A FOIA request that is mistakenly addressed to a FOIA Requester Service Center of a

DoD Component that is not the proper DoD Component to process the request.

News. Information that is about current events or that would be of current interest to the public.

Non-commercial scientific institution. An institution that is not operated on a commercial basis and that is operated solely for conducting scientific research, the results of which are not intended to promote any particular product or industry.

Perfect FOIA request. A request that meets the definition of a FOIA request and that arrives at the FOIA Requester Service Center of the DoD Component in possession of the records. The statutory time limit for responding to a FOIA request does not begin until it is perfected.

Personal file. Documents unrelated to the conduct of agency business, or indirectly related to agency business but outside the scope of agency records. A personal file is not subject to the FOIA. FOIA case law predominantly refers to personal files as personal records. Examples include:

(1) Business or professional files created before entering government service; files created during or relating to previously held positions, political materials, and reference files.

(2) Private files brought into, created, or received in the office; family and personal correspondence and materials documenting professional activities and outside business or political pursuits, including manuscripts and drafts for articles and books and volunteer and community service records that are considered personal, even if created or received while in office, because they do not relate to agency business.

(3) Work-related personal files including emails, diaries, journals, notes, and personal calendars and appointment schedules. Though work-related, these files may be personal if they are used only as reminders and personal observations on work-related topics, not for the transaction of government business.

Pre-decisional information. Information created before the decision maker reached a final decision.

Privacy Act request. As defined in 32 CFR part 310.

Public interest. The interest in obtaining official information that sheds light on an agency's performance of its statutory duties because the information falls within the statutory purpose of the FOIA to inform citizens about government activities.

Referral. The process whereby a DoD Component receiving the FOIA request locates documents originating with another DoD Component or federal

agency. Accordingly, the FOIA request and documents are transferred to the originating DoD Component or federal agency for response directly to the FOIA requester.

Representative of the news media. A person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.

Review. The time taken to conduct the initial examination of responsive documents located to determine whether one or more of the statutory exemptions permit withholding. Additionally, the time taken to redact, either manually or electronically, the documents to prepare them for release would be considered review time, as is the time to prepare and provide submitter notification and review submitter responses in accordance with E.O. 12600. Review does not include the time spent resolving general legal or policy issues regarding the application of exemptions.

Search time. Includes all time spent looking, both manually and electronically, for records responsive to a FOIA request. Electronic searches would include searching for responsive email or electronic documents whether they are located on personal computers, network servers, databases, or easily accessible storage media. The time taken by a programmer to create a program to run a requested report from a database is search time. The term "search" also includes a page-by-page or line-by-line identification (if necessary) of material in the record to determine if it, or portions of it, are responsive to the FOIA request.

Submitter. A person or entity outside of the government providing commercial or financial information or trade secrets to the government.

Technical data. Recorded information related to experimental, developmental, or engineering works that can be used to define an engineering or manufacturing process or to design, procure, produce, support, maintain, operate, repair, or overhaul material.

Toll. To delay, suspend, or hold off the effects of a statute.

Urgently needed. Information requested has a particular value that will be lost if not disseminated quickly, such as a breaking story of general public interest. Information of historical interest only, or information sought for litigation or commercial activities, would not qualify as "urgently needed," nor would a news media publication or broadcast deadline unrelated to the

news-breaking nature of the information.

§ 286.4 Policy.

It is DoD policy, pursuant to 32 CFR part 285, to promote government transparency and accountability by adopting a presumption in favor of disclosure in all decisions involving the FOIA and responding promptly to FOIA requests in a spirit of cooperation.

§ 286.5 Responsibilities.

The OSD and DoD Component heads implement the procedures prescribed in this part and ensure that supplemental guidance and procedures are in accordance with 32 CFR part 285 and this part.

Subpart B—General Provisions

§ 286.6 Public access to DoD information.

(a) The public has a right to information concerning U.S. Government activities.

(1) A DoD record (referred to in this part as "record") requested by a member of the public who follows rules established by this part must not be withheld in whole or in part unless the record is exempt from partial or total disclosure by the FOIA.

(2) The applicability of a FOIA exemption to withhold information does not preclude the DoD Component from making a discretionary release in accordance with § 286.24(b).

(b) Executive Order 13392 directs agencies to emphasize a new citizen-centered approach to the FOIA with a results-oriented focus. Because FOIA requesters are seeking a service from the government, the DoD Components must respond courteously and appropriately to FOIA requesters. Additionally, the DoD Components must provide the public with citizen-centered ways to learn about the FOIA process, information about agency records that are publicly available, and information about the status of a person's FOIA request and appropriate information about the agency's response.

(c) The Defense Freedom of Information Policy Office (DFOIPO) maintains a handbook for the public to use in obtaining information from the Department of Defense as required by section (g)(3) of the FOIA and section 2(b)(v) of Executive Order 13392. This handbook is a short, simple explanation of what the FOIA is designed to do and how the public can use it to access DoD records. This handbook will be posted on the DFOIPO Web site and the FOIA Web site of each DoD FOIA Component listed in Appendix A to this part must have a link to it.

(d) Individuals seeking DoD information should address their FOIA requests to one of the FOIA Requester Service Center addresses listed in Appendix A to this part. If a FOIA requester is uncertain where to send a FOIA request for DoD information, the FOIA requester can call 1-866-574-4970 (toll-free) for assistance.

§ 286.7 FOIA requester service center.

(a) Each DoD FOIA Program Component listed in Appendix A to this part must establish one or more FOIA Requester Service Centers.

(b) Each FOIA Requester Service Center will have a Web site that serves to educate the public on the FOIA process. These Web sites will comply with DoD Instruction 8550.01. At a minimum, each Web site will have:

(1) The address, telephone number, facsimile number, and organizational email address to which FOIA requests can be sent.

(2) A link to the DoD FOIA handbook.

(3) A description of the types of records that can be requested.

(4) The name and contact information of the DoD Component's FOIA public liaison.

(5) Information on how a FOIA requester can obtain the status of a FOIA request (either by telephone or through the FOIA Requester Service Center Web site).

(6) A FOIA library as described in § 286.20(b) or a link to the DoD Component's FOIA library if the library is centralized.

(c) The Web sites of DoD Component Headquarters FOIA Requester Service Centers will link to the Web sites of the other FOIA Requester Service Centers within their Components.

(d) The Internet home page of every DoD Component will link to the FOIA Requester Service Center for that DoD Component.

§ 286.8 FOIA Public Liaisons.

The DoD Components listed in Appendix A to the part will submit to the Director of Administration and Management (DA&M) the names of personnel to serve as DoD Component FOIA Public Liaisons. Each DoD Component will have at least one FOIA Public Liaison. Intermediate level public liaisons may be named by those DoD Components that have a large number of FOIA Requester Service Centers.

(a) The FOIA Public Liaisons are responsible for:

(1) Ensuring that the FOIA Requester Service Centers' Web sites comply with the requirements in § 286.7(b) through (d).

(2) Assisting in the reduction of any delays in responding to FOIA requests.

(3) Increasing transparency and understanding of request's statuses.

(4) Assisting in dispute resolution.

(b) The FOIA Public Liaison for the DoD Components listed in Appendix A to this part will be appointed from DFOIPO.

§ 286.9 Unofficial release of DoD information.

Records released by the authority of this part or under circumstances in which a DoD official with the appropriate authority has authorized the release of the information to the public are considered to be in the public domain. The disclosure of exempt records, without authorization by the appropriate DoD official, is not an official release of information; accordingly, it is not a FOIA release. Such a release does not waive the authority of the Department of Defense to assert FOIA exemptions to withhold the same records in response to a FOIA request. Also, while the authority may exist to disclose records to individuals in their official capacity, the provisions of this part apply if the same individual seeks the records in a private or personal capacity.

§ 286.10 Description of requested record.

The requester is responsible for providing a description of the desired record that enables the DoD Component to locate the record with a reasonable amount of effort. A reasonable description contains sufficient information to permit an organized, non-random search for the record based on the DoD Component's filing arrangements and existing retrieval systems. The DoD Component's decision on the reasonableness of the description must be based on knowledge of its files, and not on the potential volume of records that may be located and the concurrent review effort to determine releasability. The fact that a FOIA request appears broad or burdensome (e.g. a large volume of potentially responsive information) does not necessarily entitle the DoD Component to deny the FOIA request on the grounds that it does not reasonably describe the record sought.

§ 286.11 Combatant Commands.

The Combatant Commands FOIA programs are placed under OSD jurisdiction instead of the administering Military Department or the Chairman of the Joint Chiefs of Staff. This is an exception to DoD Directive 5100.03 (available at <http://www.dtic.mil/whs/directives/corres/pdf/510003p.pdf>) in

that it authorizes and requires the Combatant Commands to process FOIA requests in accordance with 32 CFR part 285 and this part.

(a) The appellate authority for the Combatant Commands is the DA&M in accordance with 32 CFR part 285. When requested, the Combatant Commands will forward directly to DFOIPO the administrative record associated with the appeal of an initial denial for records pursuant to the FOIA. The Combatant Commands will advise FOIA requesters that they have the right to appeal any adverse determinations to the DA&M.

(b) Documents originated by the Military Service components of the Combatant Commands, while performing joint exercises or operations under Combatant Command authority, are joint in nature and are under the cognizance of the Combatant Commands.

(1) Each Combatant Command will establish processing procedures that address coordinating FOIA requests for these joint documents between the Combatant Command and the Military Service component.

(2) These procedures should include the determination as to whether the IDA responsibility would be at the Combatant Command or decentralized to the Military Service component; however, appellate authority remains with the DA&M for these documents.

(3) As an exception, if the responsive documents are located within a Defense Criminal Investigative Organization (such as the Air Force Office of Special Investigations) or accident investigation file at the Military Service component, then the release, initial denial, and appellate authorities may remain with the Service or the appropriate Defense Criminal Investigative Organization. However, the Military Service Component will consult with the responsible Combatant Command during the review process before release.

(c) The FOIA Public Liaison for the Combatant Commands will be assigned from DFOIPO.

§ 286.12 Security clearances and access.

FOIA personnel require access to all records requested through their respective activities, regardless of the sensitivity or classification of the information due to the nature of their duties and responsibilities. The DoD Components must ensure that FOIA personnel have the appropriate clearances and accesses to perform their duties.

§ 286.13 Use of contractors in FOIA administration.

Pursuant to DoD Instruction 1100.22 (Available at <http://www.dtic.mil/whs/directives/corres/pdf/110022p.pdf>) and Office of Management and Budget (OMB) Circular No. A-76 (available at http://www.whitehouse.gov/omb/circulars_a076_a76_incl_tech_correction), certain functions known as inherently governmental activities must not be outsourced to a contractor. The DoD Components will not outsource inherently governmental FOIA functions. Primarily, activities that require the exercise of substantial discretion in applying government authority or in making decisions for the government are inherently governmental.

(a) Inherently governmental FOIA functions include:

(1) Formulating or approving FOIA policies and procedures.

(2) Making final determinations regarding whether to treat incoming correspondence as a FOIA or Privacy Act request.

(3) Making denial or release determinations of information requested pursuant to the FOIA.

(4) Deciding any issues regarding the scope or interpretation of a FOIA request.

(5) Determining the appropriateness of claimed exemptions.

(6) Approving the approach taken in negotiations or discussions with the FOIA requester.

(7) Deciding administrative appeals.

(8) Conducting final review of all outgoing correspondence, memorandums, and release packages.

(9) Making final determinations of requests for expedited processing, fee category, and fee waivers.

(10) Executing documents for filing in litigation pursuant to the FOIA if the documents assert an official position of the Department of Defense, any DoD Components, or any other federal agencies. Contractors may prepare and execute documents describing their own actions while processing FOIA requests.

(b) Examples of FOIA functions and duties that contractors may perform (this list is not all inclusive):

(1) Redact documents.

(2) Prepare correspondence for signature by a government official.

(3) Communicate with a FOIA requester concerning the status of the FOIA request.

(4) Make recommended redactions.

(5) Enter relevant information into the DoD Component's FOIA tracking system.

§ 286.14 Records management.

FOIA records, including all correspondence and responsive records, must be maintained and disposed of in accordance with the National Archives and Records Administration, General Records Schedule 14 and DoD Component records schedules.

§ 286.15 Relationship between the FOIA and the Privacy Act.

(a) Requesters seeking records about themselves contained only in a Privacy Act system of records will have their requests processed pursuant to the 5 U.S.C. 552a (also known as the “Privacy Act of 1974,” as amended, and referred to in this part as the “Privacy Act” implemented within the DoD by 32 CFR part 310).

(1) If the Privacy Act system of records is exempt from the provisions of section (d)(1) of the Privacy Act, and if the records, or any portion thereof, are exempt pursuant to FOIA, the requester will be so advised with the appropriate Privacy Act and FOIA exemption(s). Appeals must be processed pursuant to both the FOIA and the Privacy Act.

(2) If the Privacy Act system of records is not an exempt system, a FOIA exemption cannot be claimed on the information and all information will be released to the requester. However, privacy-related information about a third party within the requester’s Privacy Act file may be withheld from the requester. Case law supports the DoD Components advising the requester that information was withheld that is “not about you.”

(b) Requesters seeking records about themselves not in a Privacy Act system of records and who cite or imply the Privacy Act will have their requests processed pursuant to the FOIA, since the Privacy Act does not apply to these records. Appeals must be processed pursuant to the FOIA.

(c) Requesters who seek both records about themselves in a Privacy Act system of records and records contained outside a Privacy Act system of records will have their requests processed pursuant to both the Privacy Act and the FOIA.

(d) Requesters will be advised in the final response letter which statutory authorities were used, inclusive of appeal rights.

§ 286.16 Non-responsive information.

(a) The DoD Components will interpret FOIA requests liberally when determining which records are responsive, and may release non-responsive information. Responsive multiple-subject documents may contain a significant amount of non-

responsive information, the review of which may cause delays in responding to the FOIA requester. A determination that information is non-responsive should be made only when the DoD Component has a firm basis for concluding that the information is clearly beyond the scope of the requester’s evident interest in the request. In cases where it appears highly likely that the non-responsive information may be exempt from release (e.g. the document is classified), these procedures apply.

(1) The DoD Component must contact the FOIA requester, explain that the responsive documents are multi-subject and contain a significant amount of non-responsive information, and seek the FOIA requester’s concurrence to the deletion of the non-responsive information without a FOIA exemption. If the FOIA requester concurs, these redactions will be annotated on the provided document as non-responsive, and the concurrence will be reflected in the response letter.

(2) If the FOIA requester does not agree to deletion of non-responsive information without a FOIA exemption, the DoD Component will process all non-responsive and responsive information for release.

(b) The DoD Components will not apply the procedures in paragraph (a)(1) of this section to documents that have a relatively small percentage of non-responsive information. Additionally, non-responsive information will not be redacted on less than a page-by-page basis. That is, a non-responsive paragraph within an otherwise responsive page will not be redacted as non-responsive.

§ 286.17 Honoring form or format requests.

(a) The DoD Components will make reasonable efforts to:

(1) Provide the record in any form or format requested if the record is readily reproducible in that form or format in the Component’s automated system.

(2) Provide records in a form that is reasonably usable.

(3) Maintain records in forms and formats that are reproducible.

(4) Use available office equipment to digitally reproduce hard copy records onto digital media.

(b) The readily reproducible criterion is not met if a DoD Component must outsource or expend significant resources to reproduce a record into the requested format. In responding to FOIA requests for records, the DoD Components will make reasonable efforts to search for records in electronic form or format if maintained in

automated systems, except when such efforts would significantly interfere with the operation of the automated systems. Such determinations will be made on a case-by-case basis.

§ 286.18 Annual report.

The DoD Annual FOIA Report to the Attorney General is mandated by section (e)(1) of the FOIA and completed on a fiscal-year basis. Because of the magnitude of the requested statistics and the need for accuracy, the DoD Components will track the annual report data as FOIA requests are processed. This facilitates accurate compilation of the statistics in completing the report. Each September, DFOIPO provides instructions to the DoD Components concerning Component input for the Annual FOIA Report. Using the current edition of DD Form 2564, “Annual Freedom of Information Act Report” (available at <http://www.dtic.mil/whs/directives/infomgt/forms/eforms/dd2564.pdf>), the DoD Components will forward their report to DFOIPO no later than October 31. In turn, the DA&M submits a consolidated report to the Attorney General, and places a copy of this report on the Internet for public access.

§ 286.19 Dispute resolution and the Office of Government Information Services (OGIS).

DoD FOIA Public Liaisons will work to resolve disputes with FOIA requesters. When a FOIA requester seeks OGIS assistance in resolving any disputes, DoD FOIA Public Liaisons will work with OGIS to resolve the dispute. If during this informal dispute resolution process it is determined that the disputed issue is a candidate for mediation, this process will proceed as follows:

(a) OGIS will advise DFOIPO of the possibility of mediation.

(b) The applicable DoD Component will accept or reject the offer of mediation services in accordance with the component’s Alternate Dispute Resolution (ADR) policy and issuances after consulting with DFOIPO.

(c) DFOIPO will contact the DoD ADR Liaison to identify a shared neutral for the mediation process.

Subpart C—FOIA Libraries**§ 286.20 Requirements.**

(a) *General.* The FOIA requires records described in section 552(a)(2) of the FOIA and created on or after November 1, 1996, to be available electronically to the public. This is known as the FOIA library. In addition to these records, the DoD Components may elect to place other records in their libraries.

(b) *DoD Component FOIA libraries.* Each DoD Component will establish one or more FOIA libraries. The DoD Components that have only one FOIA Requester Service Center will meet this requirement by having a FOIA library on its FOIA Web site. The DoD Components with more than one FOIA Requester Service Center will meet this requirement by either having one FOIA library on its primary FOIA Web site or having a FOIA library on each FOIA Requester Service Center Web site. All DoD FOIA libraries and the documents posted in the DoD FOIA libraries will meet the requirements DoD Instruction 8550.01.

(1) *Final opinions.* Section (a)(2)(A) of the FOIA requires agencies to make final opinions available to the public. This requirement is met by the Defense Office of Hearings and Appeals Web site. DoD Components are not required to post or link to these documents in their FOIA libraries.

(2) *Statements of policy.* Section (a)(2)(B) of the FOIA requires agencies to make statements of policy and interpretations available to the public that have been adopted by the agencies and are not published in the **Federal Register**. This requirement is met by the publication of DoD issuances on the DoD Issuances Web site. DoD Components are not required to post or link to these documents in their FOIA libraries.

(3) *Administrative staff manuals or instructions.* Section (a)(2)(C) of the FOIA requires agencies to make administrative staff manuals and instructions that establish policy or interpretations that affect the public available to the public. Each DoD Component FOIA library will link to its respective Component's publicly available issuance publication Web page. For example, the Air Force FOIA Web site will link to the Air Force e-Publishing Web site, and the OSD/Joint Staff FOIA Requester Service Center will link to the DoD Issuances Web site.

(4) *Frequently requested documents.* Section (a)(2)(D) of the FOIA requires agencies to make available to the public records that are or are likely to become the subject of frequent (three or more) FOIA requests. Each DoD Component FOIA library will post documents meeting this requirement.

(5) *Index.* Section (a)(2)(E) of the FOIA requires an index of the documents posted in accordance with Section (a)(2)(D). This requirement is met by the DoD Components arranging these documents in its FOIA library by topical or descriptive words, rather than by case name or numbering system, so that the public can readily locate

material. Case name and numbering arrangements may also be included for DoD Component convenience.

(6) *Proactive releases.* DoD Components will post other documents in this section of their FOIA library, such as proactive releases, documents released in accordance with the Mandatory Declassification Review program, and other documents released in accordance with the FOIA. This section may also contain links to other component offices proactively releasing documents.

(c) *Exemptions.* All information that qualifies for withholding pursuant to one or more of the FOIA exemptions described in subpart D of this part will be redacted from all records in FOIA libraries.

§ 286.21 Record availability.

The DoD Components should consider enhancing their FOIA libraries with search engines and document categories to provide the public easier access.

§ 286.22 Indexes.

Sections 552(g)(1) and (2) of the FOIA require agencies to make publicly available an index of all major information systems and a description of major information and record locator systems.

(a) *Major information systems.* The DFOIPO Web site satisfies this requirement for the DoD. The DoD Components are not required to post or link to this index in their FOIA libraries.

(b) *Record locator system.* The DFOIPO Web site satisfies this requirement for the DoD. The DoD Components are not required to post or link to this index in their FOIA libraries.

§ 286.23 Section (a)(1) records.

(a) Although (a)(1) records are not required to be made available in response to FOIA requests or in FOIA libraries, they must be made available when feasible. Examples of (a)(1) records are descriptions of an agency's central and field organization and, to the extent they affect the public, rules of procedures; descriptions of forms available; instructions as to the scope and contents of papers, reports, or examinations; and any amendments, revisions, or reports of the aforementioned records.

(b) In accordance with section (a)(1) of the FOIA, each DoD Component will disclose, through publication in the **Federal Register**, information describing its organization, functions, procedures, substantive rules, and statements of general policy.

Subpart D—Exemptions

§ 286.24 General provisions.

(a) This section is not a thorough or exhaustive explanation of the applicability of the FOIA exemptions. The DoD Components may consult the Department of Justice Guide to the Freedom of Information Act (Available at <http://www.usdoj.gov/oip/foia-guide.html>) for more detailed explanations.

(b) The DoD Components will make discretionary disclosures of exempt information, if appropriate. A discretionary release is not appropriate for information determined to be exempt pursuant to Exemptions 1, 3, 4, 6, 7(C), and 7(F) of the FOIA as set out in § 286.25(a), (c), (d), (f), and (g)(1)(iii) and (vi). As for the other exemptions, which primarily protect governmental interests, a discretionary release is appropriate unless the DoD Component can reasonably identify a foreseeable harm that would result from release of the information. In making this determination, the DoD Components will consider the sensitivity of the document's content and its age.

(c) As described in this section, nine types of exempt information in records may be withheld, in whole or in part, from public disclosure unless otherwise prescribed by law. In general, a discretionary release of a record to one FOIA requester prevents the withholding of the same record pursuant to a FOIA exemption if the record is later requested by someone else. However, a FOIA exemption may be invoked to withhold information that is similar or related to information that has been the subject of a discretionary release.

(d) In applying exemptions, the identity of the FOIA requester and the purpose for the FOIA request are irrelevant; however, an exemption may not be invoked when the particular interest to be protected is the FOIA requester's interest.

(e) If a FOIA requester requests information that is about that FOIA requester, Exemption 6 as set out in § 286.25(f) should not be used to deny the information. However, if another FOIA requester requests the same information, it should be denied under Exemption 6.

(f) If admitting the fact of the existence or nonexistence of a record responsive to a FOIA request would itself reveal information protected from release by one of the nine exemptions, the DoD Components must neither confirm nor deny the existence or nonexistence of the requested record.

(1) This is commonly called a “Glomar” response (for detailed guidance on using this type of response, see Volume VII, Number I of the U.S. Department of Justice, “FOIA Update,” (available at: http://www.justice.gov/oip/foia_updates/Vol_VII_1/page5.htm), and the appropriate exemption must be cited by the DoD Component in the response. This situation most commonly arises with Exemptions 1, 6, and 7 as set out in § 286.25(a), (f), and (g); however, it could arise with other exemptions.

(2) A “refusal to confirm or deny” response must be used consistently by the DoD Components, not only when a record exists, but also when a record does not exist. If not used consistently, the pattern of a “no record” response when a record does not exist, and a “refusal to confirm or deny” when a record does exist, risks disclosing exempt information.

§ 286.25 Applying the FOIA exemptions.

This section describes the nine types of exempt information in records and procedures for applying them.

(a) *Exemption 1.* Pursuant to section (b)(1) of the FOIA, records properly and currently classified in the interest of national defense or foreign policy, as specifically authorized pursuant to the criteria established by an existing Executive order establishing classification criteria and implemented by regulation, such as DoD Manual 5200.01 Volume 1 (available at http://www.dtic.mil/whs/directives/corres/pdf/520001_vol1.pdf), are exempt from disclosure. If the responsive information is not classified when the FOIA request is submitted, a classification review may be undertaken by the DoD Component to determine whether the information should be classified. The procedures in DoD Manual 5200.01 Volume 1 apply in this situation. If the information qualifies as Exemption 1 information under this paragraph (a), there is no discretion regarding its release. The FOIA requester will be advised which sections of the Executive order apply in determining that the information is classified. Exemption 1 also is invoked when:

(1) Individual items of unclassified information, when compiled, reveal additional associations or relationships that meet the standard for classification pursuant to an existing Executive Order and DoD Manual 5200.01 Volume 1, and are not otherwise revealed in the individual items of information. This is known as the “mosaic” or “compilation” approach.

(2) The fact of the existence or nonexistence of a record would itself reveal classified information.

(b) *Exemption 2.* Pursuant to section (b)(2) of the FOIA, records related solely to the internal personnel rules and practices of the Department of Defense or any of the DoD Components are exempt from disclosure. DoD Components should be aware that the U.S. Supreme Court effectively eliminated the formulation of this exemption that was previously referred to as Exemption 2 (High).

(c) *Exemption 3.* Pursuant to section (b)(3) of the FOIA, records concerning matters that another statute specifically exempts are exempt from disclosure. This exemption allows for the withholding of information because its release is prohibited by another statute only if one of two disjunctive requirements is met. The statute requires that the information be withheld from the public in such a manner as to leave no discretion on the issue, or the statute establishes particular criteria for withholding or refers to particular types of matters to be withheld. For any statute enacted after October 28, 2009, in order to qualify as an Exemption 3 statute under this paragraph (c) it must cite to section (b)(3) of the FOIA. DFOIPO maintains on its Web site a list of Exemption 3 statutes used within the Department of Defense.

(1) *Personally identifying information of DoD personnel.* Title 10 U.S.C. 130b authorizes the withholding of names, ranks, duty addresses, official titles, and pay information of DoD personnel (civilian and military) in overseas, sensitive, or routinely deployable units when this information is requested pursuant to the FOIA. The United States Special Operations Command and its components qualify as sensitive units pursuant to 10 U.S.C. 130b. Initial denial authorities (IDAs) within the Department of Defense should withhold this information pursuant to Exemption 3 under this paragraph (c) subject to the exceptions listed in paragraphs (c)(1)(i) and (ii) of this section. Information withheld pursuant to Exemption 3 and this statute also should be withheld pursuant to Exemption 6 as set out in paragraph (f) of this section, and, depending on the type of records where the information is located, Exemption 7(C) as set out in paragraph (g)(1)(iii) of this section.

(i) *Civilian and military officials whose duties make them known to the public.* The DoD Components may make a discretionary release of names and duty information of personnel in overseas, sensitive, or routinely deployable units who, by the nature of their position and duties, frequently interact with the public. Officials whose

identities may be released include general and flag officers, public affairs officers (PAOs), other personnel designated as official command spokespersons, and other senior officials whose identities are known to the public through the performance of their duties.

(ii) *Release of information by DoD PAOs.* This provision does not change DoD instructions for PAOs and the rules used by public affairs offices to release information to the general public and the media. Public affairs offices should continue to release information in accordance with current DoD issuances, Privacy Act restrictions, and security classifications.

(2) *Sensitive information of foreign governments and international organizations.* Title 10 U.S.C. 130c authorizes the withholding of unclassified sensitive information of a foreign government or international organization. IDAs within the Department of Defense must withhold this information pursuant to Exemption 3 under this paragraph (c) as specified in this paragraph (c)(2) (for procedural instructions, see § 286.28(e)(2)) when they make all three of these determinations concerning the requested information:

(i) The information was provided to the Department of Defense by (or produced in cooperation with) a foreign government or international organization.

(ii) The information is withheld from public disclosure by the foreign government or international organization (the foreign government or international organization should make this representation in writing).

(iii) Any of these three conditions are met:

(A) The foreign government or international organization requests in writing that the information be withheld.

(B) The foreign government or international organization provides the information to the Department of Defense on the condition that it is not released to the public.

(C) DoD regulations specify the release of the requested information would have an adverse effect on the ability of the Department of Defense to obtain the same or similar information in the future.

(3) *CISI.* In accordance with 10 U.S.C. 130e, the Secretary of Defense and the DA&M may exempt CISI from release under the FOIA. IDAs must obtain this written determination in accordance with the procedures in § 286.28(k) before withholding CISI from a FOIA requester.

(4) *Military Flight Operations Quality Assurance (MFOQA) system data file.* In accordance with 10 U.S.C. 2254a, the Secretary of Defense and the DA&M may exempt MFOQA system data files from release under the FOIA. IDAs must obtain this written determination in accordance with the procedures in subpart E of this part before withholding MFOQA system data file information from a FOIA requester.

(d) *Exemption 4.* Pursuant to section (b)(4) of the FOIA, certain non-government financial information exempt from disclosure.

(1) This exemption protects:

(i) Trade secrets; or

(ii) Information that is:

(A) Commercial or financial.

(B) Obtained from a person or entity outside of the Federal Government.

(C) Privileged or confidential.

(2) Commercial or financial information that is voluntarily submitted to the U.S. government, absent any exercised authority prescribing criteria for submission, may be categorically protected provided it is not customarily disclosed to the public by the submitter. Examples of exercised authorities prescribing criteria for submission are statutes, Executive orders, regulations, invitations for bids, requests for proposals, and contracts. Submission of information pursuant to these authorities should be analyzed in accordance with paragraph (d)(3) of this section and § 286.28(f)(1).

(3) Commercial or financial information that is not voluntarily provided to the government is considered “confidential” for Exemption 4 under this paragraph (d) if its disclosure is likely to:

(i) Impair the government’s ability to obtain necessary information in the future (known as the “impairment prong”);

(ii) Harm an identifiable private or governmental interest; or

(iii) Cause substantial harm to the competitive position of the person providing the information.

(4) Examples of information that may be protected by Exemption 4 under this paragraph (d) include:

(i) Commercial or financial information received in connection with loans, bids, contracts, or proposals.

(ii) Statistical data and commercial or financial information concerning contract performance, income, profits, losses, and expenditures.

(iii) Personal statements given during inspections, investigations, or audits.

(iv) Financial data provided by private employers in connection with locality wage surveys that are used to fix and adjust pay schedules applicable to

the prevailing wage rate of employees within the Department of Defense.

(v) Scientific and manufacturing processes or developments concerning technical or scientific data or other information submitted with an application for a research grant, or with a report while research is in progress.

(vi) Technical or scientific data developed by a contractor or subcontractor exclusively at private expense, or developed in part with federal funds and in part at private expense. The contractor or subcontractor must retain legitimate proprietary interests in such data in accordance with 10 U.S.C. 2320–2321 and 48 CFR 227.71 and 227.72. Technical data developed exclusively with federal funds may be withheld pursuant to Exemption 3 as set out in paragraph (c) of this section if it meets the criteria of 10 U.S.C. 130 and 48 CFR 227.71 and 227.72.

(vii) Information copyrighted pursuant to 17 U.S.C. 106 if release of copyrighted material otherwise meets the standards of Exemption 4 under this paragraph (d).

(5) When the DoD Components receive FOIA requests for information that could be protected by this exemption, they will notify the submitter of the information (see § 286.28(f)(1) for notification procedures). Submitters having any objections to disclosure must submit a detailed written statement that specifies all grounds for withholding any portion of the information pursuant to Exemption 4 under this paragraph (d). This statement must explain why the information is a trade secret or commercial or financial information that is privileged or confidential (e.g., how release would cause substantial competitive harm).

(e) *Exemption 5.* Pursuant to section (b)(5) of the FOIA, inter- or intra-agency memorandums or letters containing information considered privileged in civil litigation are exempt from disclosure. Information that has been considered privileged in civil litigation is information that is usually privileged in the civil discovery context. Merely being an internal record is an insufficient basis for withholding pursuant to this exemption. Records that are not available routinely through the discovery process during litigation with the agency because they are privileged can be withheld pursuant to this exemption. The most common discovery privileges incorporated into Exemption 5 under this paragraph (e) are the deliberative process, the attorney work product, and the attorney-client privilege.

(1) *Threshold.* A document must meet the threshold requirement of being an inter- or intra-agency document before the proper privilege can be identified in any given case. Because in many instances the U.S. government must seek expert advice from external entities (or consultants), the courts developed an “outside consultant” test that helps in determining whether such an external entity qualifies as an “agency” for this exemption. If an entity meets the test, then documents that it originates may be protected by Exemption 5 under this paragraph (e). If the outside consultant is an interested party in the decision-making process, then this threshold is not met.

(2) *Privileges.* The privileges and types of information protected by Exemption 5 under this paragraph (e) include, but are not limited to:

(i) *Deliberative process privilege.* (A) To qualify for this privilege, the information must be both deliberative and pre-decisional (see § 286.3), and be part of the decision-making process. Information that is factual cannot be withheld from a FOIA requester pursuant to this privilege except when:

(1) The author of a document selects specific facts out of a larger group of facts and this very act is deliberative in nature. This information qualifies for withholding because its release would reveal the author’s internal thought processes; or

(2) The factual information is so inextricably connected to the deliberative material that its disclosure would expose or cause harm to the agency’s deliberations.

(B) A direction or order from a superior to a subordinate usually does not qualify as a deliberative process document if it constitutes policy guidance or a decision. However, correspondence from a superior to a subordinate may qualify if it discusses preliminary matters or requests information or advice relied upon in the decision-making process.

(C) An agency’s final decision and post-decisional documents related to the decision cannot be withheld pursuant to the deliberative process privilege.

(D) Examples of deliberative process documents include:

(1) Staff papers, including after-action reports, inspection reports, lessons learned, and situation reports containing staff evaluations, advice, opinions, or suggestions.

(2) Advice, suggestions, or evaluations prepared on behalf of the Department of Defense by individual consultants or by internal boards, committees, councils, groups, panels, conferences, commissions, task forces, or other

similar groups that are formed for obtaining advice and recommendations.

(3) Drafts of final records.

(4) Information of a speculative, tentative, or evaluative nature, or such matters as proposed plans to procure, lease, or otherwise acquire and dispose of materials, real estate, facilities, or functions, when such information would provide undue or unfair competitive advantage to private personal interests or would impede legitimate U.S. government functions.

(5) Agency materials underlying the President's budget decisions as described in OMB Circular No. A-11 (available at http://www.whitehouse.gov/omb/circulars_a11_current_year_a11_toc/). This includes planning, programming, and budgetary information that is involved in the defense planning and resource allocation process and out-year discretionary data.

(ii) *Attorney-client privilege*. This privilege protects confidential communications between an attorney and a client (or multiple clients that share a common interest) relating to legal matters for which the client has sought professional advice. The information that the client supplies to the attorney, the advice that the attorney gives to the client in return, and communications between attorneys that reflect client-supplied information are protected by this privilege. Unlike the deliberative process privilege, with the attorney-client privilege all the information should be withheld, including the facts, unless the client waives the privilege.

(iii) *Attorney work product privilege*. This privilege protects documents prepared by an attorney or at an attorney's direction in reasonable anticipation of litigation. Unlike the deliberative process privilege, with the attorney work product privilege all the information can be withheld, including the facts. This privilege still can be used after the litigation is complete.

(iv) *Government trade secret privilege*. This privilege protects trade secrets or other confidential research, development, or commercial information owned by the government, premature release of which is likely to affect the government negotiating position or other commercial interest.

(v) *Safety investigation privilege*. This privilege protects privileged safety information as defined in DoD Instruction 6055.07 (available at <http://www.dtic.mil/whs/directives/corres/pdf/605507p.pdf>).

(vi) *Presidential communications privilege*. This privilege protects communications among the President

and Presidential advisors created to assist the President in the exercise of non-delegable constitutional duties.

(f) *Exemption 6*. Pursuant to section (b)(6) of the FOIA, information in personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personnel privacy, is exempt from disclosure. If the information qualifies as Exemption 6 under this paragraph (f) information, there is no discretion in its release.

(1) When considering applying this exemption, an agency must balance the public interest in disclosure and the individual's privacy interest. When there is no public interest in the requested information, the information can be withheld even if there is only a negligible privacy interest. The public interest to be considered when applying this exemption is whether the information sheds light on the operations or activities of the government. The FOIA requester has the burden to show that there is a public interest in disclosure.

(2) A privacy interest may exist in personal information even though the information has been disclosed at some place and time. This is known as the concept of practical obscurity. For example, information that was once publicly known (e.g. a court-martial trial 40 years ago) may no longer be in the public's eye and has faded from memory. In this case, the privacy interest in this type of situation may have increased over time, the public interest may have decreased over time, and therefore an agency should now withhold the once-public information, since the balance of interests has now shifted in favor of privacy.

(3) Examples of other files containing personal information similar to that in personnel and medical files include:

(i) Files compiled to evaluate or adjudicate the suitability of candidates for civilian employment or membership in the Military Services, and the eligibility of individuals (civilian, military, or contractor employees) for security clearances or for access to particularly sensitive classified information.

(ii) Files containing reports, records, and other material pertaining to personnel matters where administrative action, including disciplinary action, may be taken.

(4) Because of the national emergency declared by the President on September 14, 2001, the DoD Components are authorized to withhold lists of personally identifying information of DoD personnel, including active duty military personnel, civilian employees,

contractors, members of the Reserve Components, and military dependents under Exemption 6 under this paragraph (f). Additionally, personally identifying information of DoD military and civilian personnel who are assigned to overseas, sensitive, or routinely deployable units is exempt from release pursuant to Exemption 3 as set out in paragraph (c) of this section, with 10 U.S.C. 130b as the withholding statute. Names and duty addresses (postal and email) published in telephone directories, organizational charts, rosters, and similar materials for personnel are considered "lists of personally identifying information," and therefore qualify for withholding pursuant to Exemption 6 (and Exemption 3 as set out in paragraph (c) of this section if applicable).

(5) Home addresses, telephone numbers, and private email addresses are usually protected by this exemption. This includes home addresses and military quarters addresses not associated with the occupants' names.

(6) This exemption must not be used in an attempt to protect the privacy of a deceased person. It may be used to protect the privacy of the deceased person's surviving family members if disclosure would rekindle grief, anguish, pain, embarrassment, or result in a disruption of their peace of mind. In such situations, the DoD Components must balance the surviving family members' privacy interests and the public's interest to determine its releasability.

(7) This exemption also applies when the fact of the existence or nonexistence of a responsive record would itself reveal information containing a privacy interest, and the public interest in disclosure does not outweigh the privacy interest. In this situation, the DoD Components must neither confirm nor deny the existence or nonexistence of the record being requested (Glomar response) and Exemption 6 under this paragraph (f) must be cited.

(g) *Exemption 7*. Pursuant to section (b)(7) of the FOIA, records or information compiled for law enforcement purposes are exempt from disclosure upon the identification of one of the six conditions delineated in paragraphs (g)(1)(i) through (vi) of this section. Law enforcement purposes include civil, criminal, military, and regulatory, including the implementation of Executive orders or regulations issued pursuant to law. This exemption may be invoked to prevent disclosure of documents not originally created for, but later gathered for, law enforcement purposes.

(1) *Conditions where Exemption 7 applies*—(i) *Exemption 7(A)*. This exemption applies to records compiled for law enforcement purposes when disclosure could reasonably be expected to interfere with enforcement proceedings (section (b)(7)(A) of the FOIA). The DoD Components can use Exemption 7(A) under this paragraph (g)(1)(i) during the course of law enforcement proceedings, when there is a prospective law enforcement proceeding and during any subsequent or pending proceedings resulting from the original proceeding.

(ii) *Exemption 7(B)*. This exemption applies to records compiled for law enforcement purposes when disclosure would deprive a person of the right to a fair trial or to an impartial adjudication (section (b)(7)(B) of the FOIA).

(iii) *Exemption 7(C)*. This exemption applies to records compiled for law enforcement purposes when disclosure could reasonably be expected to constitute an unwarranted invasion of the personal privacy of a living person, including surviving family members of an individual identified in such a record (section (b)(7)(C) of the FOIA).

(iv) *Exemption 7(D)*. This exemption applies to records compiled for law enforcement purposes when disclosure could reasonably be expected to disclose the identity of a confidential source, including a source within the Department of Defense; a State, local, or foreign agency or authority; or any private institution that furnishes the information on a confidential basis, and could disclose information furnished from a confidential source and obtained by a criminal law enforcement authority in a criminal investigation or by an agency conducting a lawful national security intelligence investigation (section (b)(7)(D) of the FOIA).

(v) *Exemption 7(E)*. This exemption applies to records compiled for law enforcement purposes when disclosure would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions, if such disclosure could reasonably be expected to risk circumvention of the law (section (b)(7)(E) of the FOIA).

(vi) *Exemption 7(F)*. This exemption applies to records compiled for law enforcement purposes when disclosure could reasonably be expected to endanger the life or physical safety of any individual (section (b)(7)(F) of the FOIA).

(2) *Examples of Exemption 7 applications*. (i) Statements of witnesses and other material developed during the

course of an investigation and all materials prepared in connection with related government litigation or adjudicative proceedings may be exempt from disclosure pursuant to Exemptions 7(A), 7(C), and 7(D) as set out in paragraphs (g)(1)(i), (iii), and (iv) of this section.

(ii) The identity of firms or individuals being investigated for alleged irregularities involving contracting with the Department of Defense when no indictment has been obtained nor any civil action filed against them by the United States may be exempt from disclosure pursuant to Exemptions 7(A) and 7(C) as set out in paragraphs (g)(1)(i) and (iii) of this section.

(iii) Information obtained in confidence, expressed or implied, during a criminal investigation by a criminal law enforcement agency or a lawful national security intelligence investigation may be exempt from disclosure pursuant to Exemptions 7(A), 7(C), and 7(D) as set out in paragraphs (g)(1)(i), (iii), and (iv) of this section. National security intelligence investigations include background security investigations and those investigations conducted to obtain affirmative or counterintelligence information.

(iv) Emergency action plans, guidelines for response to terrorist attacks, analyses of security procedures, and other sensitive information that could prove deadly if obtained by those seeking to do harm to the public on a large scale may be exempt from disclosure pursuant to Exemptions 7(E) and 7(F) as set out in paragraphs (g)(1)(v) and (vi) of this section.

(h) *Exemption 8*. Pursuant to section (b)(8) of the FOIA, records in or related to examination, operation, or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions are exempt from disclosure.

(i) *Exemption 9*. Pursuant to section (b)(9) of the FOIA, records containing geological and geophysical information and data (including maps) concerning wells are exempt from disclosure.

§ 286.26 Exclusions.

Section (c) of the FOIA contains three special protection provisions referred to as record exclusions. Of these exclusions, only two are applicable to the Department of Defense. These exclusions expressly authorize DoD law enforcement components to treat especially sensitive records under certain specified circumstances as not subject to the requirements of the FOIA. The DoD Component considering

invoking one of these exclusions must first consult with legal counsel and with DFOIPO. In turn, DFOIPO will consult with the Office of Information Policy, Department of Justice. Because of the possibility of the existence of excluded records, DoD law enforcement components will respond to all FOIA requests when no records are located or when located records fall within an exclusion by stating that no records responsive to the FOIA were found. The instances where a FOIA request involves excluded records are:

(a) The records or information are described in section (b)(7)(A) of the FOIA and the following two conditions are met:

(1) The investigation or proceeding involves a possible violation of criminal law, and

(2) There is reason to believe that the subject of the investigation or proceeding is unaware of the pending investigation or proceeding and the disclosure of the existence of the records could reasonably be expected to interfere with law enforcement proceedings.

(b) Informant records maintained by a DoD law enforcement component under an informant's name or personal identifier are requested by a third party using the informant's name or personal identifier unless the informant's status as an informant has been officially confirmed.

Subpart E—FOIA Request Processing

§ 286.27 General provisions.

(a) *Requests from private parties*. (1) The provisions of the FOIA are reserved for members of the public and are not to be used by government agencies seeking official information.

(2) When personally identifying information in a record is requested by the subject of the record or the subject's representative, and the information is contained within a Privacy Act system of records, it is processed pursuant to the Privacy Act. If a Privacy Act exemption applies to the system of records, then the request is processed pursuant to the FOIA. The DoD Components must comply with 32 CFR part 310 to confirm the identity of the requester.

(b) *Requests from local or State government officials, Congress, and foreign governments*. (1) Local or State government officials, foreign officials requesting on behalf of their government, foreign individuals, or foreign organizations requesting DoD Component records pursuant to the FOIA are considered the same as any other FOIA requester.

(2) The FOIA does not apply to the records of a DoD Component that is an element of the Intelligence Community as defined in 50 U.S.C. 401a(4) if the FOIA request is from a non-U.S. government entity or representative.

(3) Requests from members of Congress who are not seeking records on behalf of a congressional committee or subcommittee, or on behalf of the House of Representatives or the Senate sitting as a whole, should not be processed through FOIA channels; however, any release of information will be consistent with a release to any individual pursuant to the FOIA and its withholding exemptions. In these cases, the member will not be provided with FOIA appeal rights.

(4) Requests submitted by members of Congress on behalf of a congressional committee or subcommittee or on behalf of the House of Representatives or the Senate sitting as a whole that are received by the DoD Component's FOIA Requester Service Center are referred to the appropriate office that handles legislative inquiries for processing pursuant to DoD Instruction 5400.04 (available at <http://www.dtic.mil/whs/directives/corres/pdf/540004p.pdf>) or supplementing DoD Component directives. Such requests are not processed pursuant to the FOIA.

(5) If a member of Congress chooses to request DoD records pursuant to the FOIA, then the provisions of this part apply.

(6) Constituent requests for DoD records that are forwarded by members of Congress are processed as FOIA or Privacy Act requests, as applicable. The member forwarding the request will be advised of these circumstances.

(7) The Office of the Assistant Secretary of Defense for Legislative Affairs will be notified of every instance when a member of Congress objects that the DoD has not responded to a congressional request for information in the form it was originally requested, whether that request is made by an individual member or a congressional committee.

(8) Requests from officials of foreign governments that do not invoke the FOIA are referred to the appropriate office authorized to disclose official DoD information to foreign governments, and the requester is so notified.

(c) *Privileged release outside of the FOIA to U.S. Government officials.* (1) Records exempt from release to the public pursuant to the FOIA may be disclosed in accordance with DoD Component regulations to another federal agency in response to an official request from the other federal agency in

accordance with applicable law and regulations, as determined by the DoD Component head or designee. Such disclosures are not official releases to the public under the FOIA.

(2) The DoD Components will inform officials receiving records in accordance with the provisions of this paragraph that those records are exempt from public release pursuant to the FOIA. The DoD Components also will advise officials of any special handling instructions. Classified information is subject to the provisions of Volumes 2 and 3 of DoD Manual 5200.01. Information contained in a Privacy Act system of records is subject to 32 CFR part 310.

§ 286.28 Processing procedures.

(a) *Receipt and control.* When it receives a FOIA request, a FOIA Requester Service Center must open a file in a formal control system designed for accountability and compliance with the FOIA. The control system should include the data elements needed to compile the statistics required in the Annual FOIA Report and other reports required by another authority. Each request is assigned a unique tracking number which is included in all correspondence with the requester.

(b) *Prompt action on FOIA requests.* (1) When unusual or exceptional circumstances prevent a FOIA Requester Service Center from making a final response determination within the statutory time period, it will advise the FOIA requester in writing and provide the FOIA requester an opportunity to narrow the scope of the FOIA request or arrange for an alternative timeframe. FOIA Requesters Service Centers will, as a matter of good practice, be available to assist requesters in the formulating of requests.

(i) Unusual circumstances are:

(A) The responsive documents are located at a facility geographically separated from the FOIA Requester Service Center processing the FOIA request.

(B) The responsive documents are voluminous.

(C) One or more other agencies or DoD Components have a substantial interest in either the determination or the subject matter of the FOIA request, requiring the FOIA Requester Service Center processing the FOIA request to consult with the other agencies or DoD Components.

(ii) Exceptional circumstances are not affirmatively defined in the FOIA; however, a predictable agency workload of requests may be considered an exceptional circumstance if the DoD Component can demonstrate reasonable

progress in reducing its backlog of pending requests.

(2) DoD Components receiving a misdirected FOIA request for records originating with another DoD Component will refer the FOIA request to the correct DoD Component and inform the receiving DoD Component of the date the FOIA request was originally received. Additionally, it will advise the FOIA requester of this transfer. This routing requirement only applies to those FOIA requests directed to a DoD Component that seek documents for which the DoD is responsible. If responsibility for the requested records rests with a non-DoD agency (e.g., Department of State), then the DoD Component need only advise the FOIA requester to submit the FOIA request to the proper agency. Misdirected FOIA requests will not be transferred to a law enforcement or Intelligence Community agency or DoD Component. Instead, the FOIA Requester Service Center receiving the request will contact the for guidance if there is reason to believe that the law enforcement or Intelligence Community agency or DoD Component would have responsive records.

(3) DoD Components will provide interim responses when they are unable to make a final determination within 20 working days and are encouraged to further communicate with the FOIA requester before the final response, if appropriate. These communications may include acknowledging receipt of the FOIA request and negotiating with the FOIA requester concerning the scope of the FOIA request, the response timeframe, and fee agreement. However, such communications do not constitute a final response determination. The initial interim response will include as a minimum:

(i) The date the 20-day statutory time period started for the FOIA request.

(ii) The tracking number for the FOIA request.

(iii) Contact information on how the FOIA requester can obtain information about the processing of the FOIA request.

(4) The statutory time period to make a release determination on a FOIA request usually begins on the date when the FOIA Requester Service Center responsible for the requested records receives the FOIA request. However, if the FOIA request was originally misdirected to another FOIA Requester Service Center within the same Component, the statutory time period begins on the day the appropriate DoD Component FOIA Requester Service Center receives the FOIA request, or 10 working days after it was received by the FOIA Requester Service Center

originally receiving the FOIA request, whichever date is earlier. When a FOIA request is sent directly to a DoD Component office not designated to receive FOIA requests, the statutory time period does not begin until it is received by a FOIA Requester Service Center.

(5) The 20-working-day statutory period for responding to a FOIA request begins only when a perfected FOIA request (see § 286.3) is received. After this time, a DoD Component FOIA Requester Service Center may toll the statutory time period for only two reasons. In both situations, the FOIA requester's response to the agency's request ends the tolling period.

(i) The time period may be tolled one time when the FOIA Requester Service Center goes back to the FOIA requester and reasonably asks for additional information (not connected to the assessment of fees).

(ii) The time period may be tolled if it is necessary for the FOIA Requester Service Center to clarify issues regarding fee assessment with the FOIA requester. There is no limit given for the number of times an agency may go back to a FOIA requester to clarify fee assessment issues, which sometimes may need to be done in stages as the records are located and processed.

(c) *Estimated completion date.* When a FOIA Requester Service Center receives an inquiry regarding the status of a request, it will provide the requester an estimated date when the FOIA request is expected to be completed.

(d) *Multi-track processing.* (1) FOIA Requester Service Centers will establish a minimum of three processing tracks, all based on a first-in and first-out concept and with FOIA requests ranked by date of receipt. One track is for simple FOIA requests, one for complex FOIA requests, and one for expedited FOIA requests. Additional tracks may be established by FOIA Requester Service Centers. Each FOIA Requester Service Center determines which processing track a FOIA request is placed. FOIA requesters whose FOIA requests do not qualify for the simple processing track should be given an opportunity to limit the scope of the FOIA request in writing in order to qualify for it.

(2) FOIA Requester Service Centers will place received referrals and consultations in processing tracks based on the date that the FOIA request was received by the agency that received the initial FOIA request. Separate processing queues dedicated only to consultations may be established FOIA Requester Service Centers.

(e) *Expedited processing.* Section (a)(6)(E) of the FOIA establishes two

circumstances that merit expedited processing of FOIA requests: Compelling need and other cases determined by the agency. The same criteria apply to FOIA requests for expedited processing of administrative appeals. The DoD Components must make expedited processing determinations within 10 calendar days after receipt of the FOIA request. Once the DoD Component decides to grant expedited processing, the FOIA request is processed as soon as practicable. Actions by the DoD Components to initially deny or affirm the initial denial on appeal of a FOIA request for expedited processing, and failure to respond in a timely manner, are subject to judicial review.

(1) *Compelling need.* Expedited processing is granted to a FOIA requester upon a specific request for such and demonstrations of a compelling need (see § 286.3) for the information.

(i) It is the responsibility of the FOIA requester to demonstrate that the requested information is urgently needed.

(ii) The requester must include with the request a demonstration of a compelling need that the FOIA requester must certify as true and correct to the best of the FOIA requester's knowledge and belief.

(2) *Imminent loss of due process rights.* Expedited processing is granted to a FOIA requester if loss of substantial due process rights is imminent. A demonstration of imminent loss of substantial due process rights by the FOIA requester includes a description of the due process rights that would be lost and a statement certified to be true and correct to the best of the FOIA requester's knowledge. This statement must be with the FOIA request for it to be considered and responded to within the 10 calendar days required for decisions on expedited access. If the DoD Component decides to expedite the FOIA request for this reason, it may be processed in the expedited track behind those requests qualifying for compelling need.

(3) *Humanitarian need.* Expedited processing is granted when the failure to obtain the requested information on an expedited basis could reasonably be expected to harm substantial humanitarian interests.

(f) *Responsive documents originated by a non-government source—(1) Commercial or financial information.* The provisions of E.O. 12600 apply when a FOIA request is received for a record that arguably contains information exempt from release pursuant to Exemption 4 of the FOIA as

set out in § 286.25(d). A government contract is an example of this type of record.

(i) The submitter of the confidential commercial information must be notified promptly of a FOIA request for this information and afforded reasonable time to present any objections concerning release. If the submitter does not respond by the specified time, he or she will be considered to have no objection to the disclosure of the information. The submitter notice letter should include, as an attachment, a copy of the requested information. If notification of a voluminous number of submitters is required, such notification may be done by posting or publishing the notice in a place that would reasonably fulfill the notification requirement.

(ii) If the submitter objects to disclosure, he or she must submit a detailed written statement that specifies all grounds for withholding any portion of the information pursuant to Exemption 4 of the FOIA as set out in § 286.25(d). This statement must show why the information is a trade secret or commercial or financial information that is privileged or confidential (i.e., release would cause substantial competitive harm). Submitter objections are evaluated by the DoD Component and the final decision to disclose information claimed to be exempt pursuant to Exemption 4 will be made by an appropriate official.

(iii) When a substantial issue has been raised by the submitter, the DoD Component may seek additional information and afford the submitter a reasonable opportunity to present arguments on the legal and substantive issues involved prior to making an agency determination.

(iv) If a DoD Component decides to disclose commercial business information over the objection of a submitter, the Component must provide the submitter written notice, which includes:

(A) A statement of the reasons why each of the submitter's disclosure objections were not sustained;

(B) A copy of the information to be disclosed;

(C) A specified disclosure date, which must be a reasonable time after the notice.

(v) The FOIA requester is notified when:

(A) The DoD Component notifies the submitter of the FOIA request and asks for comments.

(B) The DoD Component advises the submitter that the requested information will be released over the submitter's objections.

(vi) The submitter is notified immediately if the FOIA requester brings suit seeking to compel disclosure of the submitter's information.

(vii) If the submitted information is a proposal provided in response to a solicitation for a competitive proposal, and the proposal is in DoD possession and control and meets the requirements of 10 U.S.C. 2305(g), the proposal will not be disclosed, and no submitter notification or analysis are required. The proposal must be withheld from public disclosure pursuant to 10 U.S.C. 2305(g) and Exemption 3 of the FOIA as set out in § 286.25(c). This statute does not apply to bids, unsolicited proposals, or any proposal that is set forth or incorporated by reference in a contract between the DoD Component and the submitter of the proposal. In these situations, paragraphs (f)(1)(i) through (vi) of this section are followed except for sealed bids that are opened and read to the public.

(viii) If the record or information was submitted on a strictly voluntary basis, absent any exercised authority that prescribes criteria for submission, and the record or information would customarily not be released to the public, the submitter need not be notified. The DoD Component withholds this information pursuant to Exemption 4 of the FOIA as set out in § 286.25(d).

(ix) In anticipation of future FOIA requests, the DoD Components may establish procedures whereby submitters are asked to provide their written comments on the releasability of the submitted information at the time the information is submitted. However, this procedure does not alleviate the DoD Components of the responsibility of evaluating the submitter's response before the information is released or denied pursuant to the FOIA.

(2) *Foreign government or international organization information.* The coordination provisions of this paragraph (f)(2) apply to the release of responsive information received from foreign governments or international organizations, such as the North Atlantic Treaty Organization, United Nations Commands, the North American Aerospace Defense Command (NORAD), the Inter-American Defense Board, or the International Committee of the Red Cross.

(i) DoD Components should coordinate directly with their foreign government counterparts when processing foreign government information responsive to a FOIA request. Coordination also may be made through the Department of State or the specific foreign embassy.

(ii) The Office of Freedom of Information (OFOI), which is also the OSD/Joint Staff FOIA Requester Service Center, has a coordination channel with the United Kingdom Ministry of Defence (UK MOD). (See the Appendix A to this part for the OSD/Joint Staff FOIA Requester Service Center address.) When a DoD Component locates UK MOD-originated information responsive to a FOIA request and it is unable to coordinate with a UK MOD counterpart it may forward the information to OFOI for consultation, which will coordinate with the UK MOD for release. The UK MOD release recommendation will be forwarded by OFOI back to the DoD Component for direct response to the FOIA requester.

(iii) When the DoD Components locate NORAD documents in their files responsive to a FOIA request, they will refer the documents to the United States Northern Command FOIA Requester Service Center, which will consult with NORAD.

(iv) Coordination with most international organizations may be made directly with those organizations.

(v) When a foreign government or international organization asks the Department of Defense to withhold classified information originated by that foreign government or international organization, it is withheld pursuant to Exemption 1 of the FOIA as set out in § 286.25(a).

(vi) If the DoD Component is asked to withhold sensitive unclassified information originated by a multinational organization or foreign government, then the DoD Component withholds it pursuant to Exemption 3 of the FOIA as set out in § 286.25(c) and references the relevant statute as 10 U.S.C. 130c. To qualify for withholding, the information must meet these limitations.

(A) If the information came into possession or control of the Department of Defense prior to October 30, 2000, and more than 25 years prior to receipt of the FOIA request, the DoD Component notifies the foreign government or international organization of the request for disclosure. The information then qualifies for withholding only if the foreign government or international organization requests in writing that the information not be disclosed for a specific period of time. This date can be extended with a later request by the foreign government or international organization.

(B) If the information came into possession or control of the Department of Defense on or after October 30, 2000, the information cannot be withheld after

the release date specified by the foreign government or international organization. When one or more foreign governments or international organizations provided the information, the latest date specified by any of them will be used. If no release date was specified, and the information came into the possession of the DoD Component more than 10 years prior to receipt of the FOIA request, the procedures set forth in paragraph (f)(2)(vi)(A) of this section apply.

(g) *File of initial denials.* Copies of all initial denials are maintained by each DoD Component in a form suitable for rapid retrieval, periodic statistical compilation, and management evaluation. Records denied for any of the reasons contained in § 286.25 must be maintained for a period of 6 years to meet the statute of limitations requirement.

(h) *Processing the receipt of FOIA fees.* The Treasurer of the United States has established an account for FOIA receipts, Receipt Account 3210. When depositing the receipts, the account number must be preceded by the appropriate disbursing office 2-digit prefix. This account will be used for depositing all FOIA receipts except for those of working capital and non-appropriated funded activities. Those activities must establish their own procedures for depositing FOIA receipts to the applicable fund. All checks or money orders remitting FOIA fees should be made payable to the U.S. Treasurer. For more information on technical data fees, see § 286.34.

(i) *Creating a record.* A record must exist and be in DoD possession and control at the time of the search to be subject to this part and the FOIA. The DoD Components are not obligated to create, compile, or answer questions to satisfy a FOIA request. However, the DoD Components may compile a new record when so doing would result in a more useful response to the FOIA requester or would be less burdensome to the DoD Component than providing existing records. This could be the case when a FOIA requester wants, for example, a list of all travel locations for a single senior official. Instead of processing the large number travel documents, the DoD Component may wish to compile a list of travel locations extracted from the documents. Any such compilation should be coordinated with and approved by the FOIA requester. The cost of creating or compiling such a record may not be charged to the FOIA requester unless the fee for creating the record is equal to or less than the fee that would be charged for providing the existing record. Fee assessments must

be in accordance with subpart F of this part.

(j) *Electronic records and searches*—(1) *Significant interference*. Section (a)(3)(C) of the FOIA allows DoD Components to not conduct a search for responsive documents if the search would cause significant interference with the operation of the DoD Component's automated information system.

(2) *Business as usual approach*. A "business as usual" approach exists when the DoD Component has the capability to process a FOIA request for electronic records without a significant expenditure of monetary or personnel resources. DoD Components are not required to conduct a search that does not meet this business as usual criterion.

(i) Creating computer programs or purchasing additional hardware to extract email that has been archived for emergency retrieval usually are not considered business as usual if extensive monetary or personnel resources are needed to complete the project.

(ii) Creating a computer program that produces specific requested fields or records contained within a well-defined database structure usually is considered business as usual. The time to create this program is considered as programmer or operator search time for fee assessment purposes and the FOIA requester may be assessed fees in accordance with subpart F of this part. However, creating a computer program to merge files with disparate data formats and extract specific elements from the resultant file is not considered business as usual, but a special service.

(3) *Data links*. The DoD Components are not required to expend DoD funds to establish data links that provide real-time or near-real-time data to a FOIA requester.

(k) *CISI and MFOQA data files*. IDAs may deny CISI and MFOQA system data files from release under Exemption 3 of the FOIA as set out in § 286.25(c) after the DA&M has made a written determination that the information is exempt.

(1) When DoD Components have reason to believe that information responsive to a FOIA request is CISI or MFOQA system data file information, they will submit a package to the DA&M, through DFOIPO, recommending exemption of the requested information. The package will contain, at a minimum:

(i) A copy of the initial FOIA request.
(ii) A copy of the documents in electronic format, with only the CISI or MFOQA system data file information

marked. Do not indicate information that will be denied under any other exemption.

(iii) Details on how the information recommended for exemption meets the threshold of qualifying as CISI or as MFOQA system data file.

(iv) A thorough explanation of the harm that could reasonably be expected to result if the information is released. This explanation must be as specific as possible to allow the DA&M to make a fully informed determination; however, it should contain only publicly releasable information since the DA&M's determination, accompanied by a statement of the basis for determination, will be made available on the DFOIPO Web site. An explanation could be an attachment from a subject matter expert;

(v) Any documentation of the public interest in the release of the information. This could be provided to the DoD Component by the FOIA requester or other interested parties supporting the FOIA request.

(2) Upon receipt of the package, DFOIPO will:

(i) Review it to determine whether the DoD Component's recommendations meet the requirements of the FOIA and the applicable Exemption 3 of the FOIA as set out in § 286.25(c) statute(s).

(ii) Contact the FOIA requester advising him or her that the Component is asking the DA&M to exempt information responsive to his or her FOIA request. The FOIA requester will be provided with an opportunity to provide a statement to the DA&M detailing the public interest in the release of the information. The FOIA requester also will be advised that this statement will be made available to the public (without personally identifying information such as a home mailing address) as part of the requirement to make publicly available the statement of the basis for the determination.

(iii) Prepare all documentation for review by selected OSD Components and the Office of the General Counsel of the Department of Defense (OGC, DoD). The package will be returned to the Component for further processing and resubmission should any deficiencies be identified.

(iv) Upon complete review, forward the package to the DA&M for determination.

(3) After the DA&M determination is made, DFOIPO will provide it to the DoD Component and post it, along with a statement of the basis for determination, on its Web site. The DoD Component will then deny the information determined to be exempt by the DA&M by providing a copy of the

determination to the FOIA requester, advising the FOIA requester of the DoD Component's IDA (the DA&M should not be indicated as the IDA), and advising the FOIA requester of the right to appeal to the DoD Component's appellate authority.

§ 286.29 Initial determinations.

(a) *Denials of information*. (1) The determination whether to withhold information responsive to a FOIA request must be made by an IDA. In designating IDAs, the DoD Component will balance the goals of centralization of authority to promote uniform decisions, and of decentralization to facilitate responding to each FOIA request within the time limitations of the FOIA. The IDA will review all withheld information to determine whether it meets the criteria for withholding pursuant to one or more of the FOIA exemptions. This determination may be made upon the recommendation of a review official.

(2) IDAs and review officials will not use the existence of classification markings or distribution limiting statements, such as "For Official Use Only" markings, as justification to withhold information. Information so marked must be reviewed after the receipt of a FOIA request to determine if a FOIA exemption allows the withholding of the information.

(3) To deny information in a requested record that is in the possession and control of the DoD Component, the IDA must determine that one or more of the FOIA exemptions justify withholding all or part of the record.

(4) The IDA should consult with PAOs to become familiar with subject matter that is considered to be newsworthy, and advise PAOs of FOIA requests from news media representatives. The IDA also should inform PAOs in advance when they intend to withhold or partially withhold a record if it appears the withholding action may be a media issue.

(b) *Reasons for denying a FOIA request other than exemptions*. The following are reasons, other than using one or more exemptions, for denying a FOIA request. The DoD Components will track each reason in its control system database for ease of retrieval and reporting in the Annual FOIA Report.

(1) *Partial or total denial*. The record is denied in whole or in part in accordance with procedures set forth in the FOIA. A Glomar response (see § 286.12(e)) is a total denial.

(2) *No records*. A reasonable search of files failed to identify responsive records or where no search is

undertaken because the DoD Component determines that no records responsive to the request would be located.

(3) *Referrals.* All responsive records have been transferred to another DoD Component or federal agency.

(4) *Request withdrawn.* The FOIA request is withdrawn by the FOIA requester.

(5) *Fee-related reason.* The FOIA requester is unwilling to pay fees associated with a FOIA request; the FOIA requester is past due in the payment of fees from a previous FOIA request; or the FOIA requester disagrees with the fee estimate.

(6) *Records not reasonably described.* A record has not been described with sufficient particularity to enable the DoD Component to locate it by conducting a reasonable search.

(7) *Not a proper FOIA request for some other reason.* The FOIA requester has failed unreasonably to comply with procedural requirements, other than fee-related requirements, imposed by this part or by DoD Component supplementing regulations. This would include not having a return mailing address.

(8) *Not an agency record.* The information requested is not a record within the meaning of the FOIA and this part.

(9) *Duplicate request.* The FOIA request is a duplicate request (e.g., a FOIA requester asks for the same information more than once). This includes identical requests received from the same requester for the same information through different means (e.g., email, facsimile, mail, courier) at the same or different times.

(10) *Other.* Any other reason why requested records are not provided other than those outlined in paragraphs (b)(1) through (9) of this section. The reasons the DoD Components will use are:

(i) Misdirected request.

(ii) *Records publicly available.* Records are available on a U.S. government Internet Web site (for FOIA requesters with Internet access) or at some other government agency (e.g., the Government Printing Office or the National Technical Information Service).

(iii) *Litigation.* The FOIA request is administratively closed because the FOIA requester has filed a complaint in federal court. If this is the case, the DoD Component FOIA Requester Service Center should consult legal counsel to determine whether they should continue processing the FOIA request.

(iv) *Administrative.* The FOIA request is closed for any reason not covered by this subsection (e.g. the FOIA requester moves and leave no forwarding address). The DoD Components should use this reason in very few cases.

(c) *Responding to FOIA requesters.* All correspondence with FOIA requesters must include the FOIA request tracking number.

(1) When a decision is made to release a record, a copy should be made available promptly to the FOIA requester.

(2) When a FOIA request for a record is denied in whole or in part, the official designated to respond will provide the FOIA requester in writing an explanation of the substantive basis for denial, including specific citation of the statutory exemption applied (e.g., section (b)(1) of the FOIA), a brief explanation of the exemption, why it is being used to withhold information, and the address where the appeal should be mailed. The basis for the determination will be in sufficient detail to permit the FOIA requester to make a decision concerning an appeal. If the IDA does not sign the response letter, the name and duty title of the IDA must be specified in the letter. The official also will advise the FOIA requester that any appeal to the adverse determination must be postmarked no later than 30 calendar days after the date of the initial denial letter.

(3) The DoD Component will make a reasonable effort to estimate the volume of the records denied in their entirety and provide this estimate to the FOIA requester, unless providing such an estimate would harm an interest protected by a FOIA exemption. This estimate should be in number of pages or in some other reasonable form of estimation.

(4) When a denial is based on a statute qualifying as a FOIA Exemption 3 of the FOIA as set out in § 286.25(c) statute, the DoD Components must state the particular statute relied upon to deny the information along with a short description of the statute.

(5) When a FOIA requester is assessed fees for processing a FOIA request, the FOIA requester's fee category will be specified in the final response letter. The DoD Components also will provide the FOIA requester with a complete cost breakdown (e.g., 15 pages of office reproduction at \$0.15 per page; 3 hours of professional level search at \$56.00 per hour) in the response letter.

(d) *Providing documents to FOIA requesters.* This paragraph (d) applies when a FOIA requester is provided with

documents in which some information is withheld.

(1) Although portions of some records may be denied, the remaining reasonably segregable non-exempt portions must be released to the FOIA requester. The DoD Components are encouraged to use onscreen electronic redaction capabilities when redacting documents. If a DoD Component does not have this capability, it must not use black magic markers for document redaction because their use does not adequately block the exempt information. Acceptable manual methods of redaction include black or white tape that completely blocks out the information below it or manually cutting the exempt information out of a copy of the responsive document. The last step when using a manual redaction method is making a photocopy of the final product to verify that all exempt information is deleted.

(2) The amount of deleted information must be indicated on the released portion of paper records, or electronic copies of paper records, by use of brackets or darkened areas. In no case will the deleted areas be left "white" without the use of brackets to show the bounds of deleted information. In the case of electronic deletion or deletion in audiovisual or microfiche records, if technically feasible, the amount of redacted information will be indicated at the place in the record such deletion was made.

(3) When a DoD Component withholds information within a partially releasable document, the exemption pursuant to which a withholding is made must be indicated on the document. This marking of the exemption will be located within the redacted portion or next to it. Figures 1, 2, and 3 of this section demonstrate several possible approaches to marking documents to specify the exemption being asserted.

(4) An exception to this requirement to indicate the amount and location of redacted information pertains to those instances when revealing the amount and location of the redacted information would harm an interest protected by the asserted exemption(s). This exception includes the situation in which revealing the exemption itself on the face of the released-in-part document would harm an interest protected by the exemption. In such rare circumstances, the DoD Components need not indicate the exemption used on the released document.

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Figure 1. Indicating Exemptions When Part of a Paragraph Is Withheld

On 11/15/57, [REDACTED] 7(C) advised IC [REDACTED] 7(C) that the records of [REDACTED] 7(C) reflect only [REDACTED] 7(C) inquiries concerning [REDACTED] 7(C) during 6/56 and 6/57, which confirm [REDACTED] 7(C) local address and employment.

Figure 2. Indicating Exemptions When an Entire Paragraph Is Withheld

[REDACTED]

EXEMPTIONS B2/7E

[REDACTED]

Figure 3. Using Arrows or Lines to Indicate the Exemptions Used

On March 25, 1957, [REDACTED] appeared at the Cincinnati Office for the purpose of calling attention to a letter dated March 19, 1957, which he had received from [REDACTED]. [REDACTED]

[REDACTED] B5

[REDACTED] B5

[REDACTED] B6

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(e) *Commercial delivery services.* A commercial delivery service may be used if FOIA requester asks for the service to receive the requested information in a timelier manner and the FOIA requester pays directly for the service.

§ 286.30 Referrals and consultations.

Referral and consultation procedures are based upon the concept that the originators of information within a record must make release determinations on that information.

(a) *Referrals.* (1) DoD Components locating responsive documents originating with another DoD Component or agency outside the DoD will refer the documents, along with a copy of the FOIA request, to the originator for response directly to the FOIA requester. The DoD Components referring FOIA requests will include point of contact's name, telephone number, and an email address in the cover memorandum.

(2) If the DoD Component locating the record has an equity interest in the document, it will provide an opinion on

its releasability with the referral. The name and duty title of the IDA responsible for the decision to withhold the information will be provided.

(3) Referrals of records will not be made to non-federal agency entities (e.g., a city government). In these cases, the non-federal agency entity may be consulted for a release recommendation (e.g., a foreign government or international organization (see paragraph § 286.28 (e)(2)); however, response to the FOIA requester remains the responsibility of the DoD Component locating the record.

(4) The standard referral procedure is not appropriate where disclosure of the identity of the DoD Component or agency to which the referral would be made could harm an interest protected by an applicable exemption, such as the exemptions that protect personal privacy and national security interests. For example, if a non-law enforcement DoD Component responding to a request for records on a living third party locates within its files records originating with a law enforcement agency, and if the existence of that law enforcement interest in the third party was not publicly known, then to disclose that law enforcement interest could cause an unwarranted invasion of the personal privacy of the third party. Similarly, if a DoD Component locates material originating with an Intelligence Community agency, and the involvement of that agency in the matter is classified, then to disclose or give attribution to the involvement of that Intelligence Community agency could cause national security harms. In all instances when records originating with a law enforcement or Intelligence Community agency are located, in order to avoid harm to an interest protected by an applicable exemption, the DoD Component locating the records should contact the originating DoD component or agency to seek its views on the disclosability of the records. The originating DoD Component or agency will then direct the DoD Component locating the records on the procedures that should be followed. These procedures may involve referring the records or conveying the release determination of the originating entity without attribution.

(5) DoD Components will inform FOIA requesters of all referrals except in the instances described in § 286.30(a)(3). DoD Components receiving referrals will advise FOIA requesters of the date of receipt, the tracking number for the FOIA request, and contact information on how the FOIA requester can obtain information about the processing of the FOIA request.

(6) An exception to this process is when a DoD Component locates responsive records that it created solely for the use of another DoD Component or agency, and it has no objections to their release. The originating DoD Component will refer the record to the other DoD Component or agency for a release determination and direct response to the FOIA requester, who will be notified of the referral. An common example of this exception is contract audits created by the Defense Contract Audit Agency for another DoD Component.

(b) *Consultations.* When a DoD Component locates a responsive record that it originated and determines that another DoD Component or an agency outside the Department of Defense has an interest or equity in the record, the DoD Component must consult with the other entity and obtain its release recommendation. The consulted entity will provide its release recommendation back to the originating DoD Component, which will then respond to the FOIA requester. The FOIA requester should not be advised of this consultation unless information is withheld by the consulted agency. DoD Components seeking a release determination by consulting with another agency will keep the FOIA request open until it responds to the FOIA requester.

(c) *Processing tracks.* The DoD Components that receive referrals or consultations must process them in their multi-track processing systems, based upon the date of initial receipt of the perfected FOIA request by the government.

(d) *White House information.* DoD Components locating records originating with the National Security Staff (NSS), the White House, or the White House Military Office (WHMO), or containing information that these agencies would have an equity interest, will forward the records to OFOI, which serves as the OSD/Joint Staff FOIA Requester Service Center. (See Appendix A to this part for the OSD/Joint Staff FOIA Requester Service Center address.) OFOI will coordinate with NSS, the White House, or WHMO and return the records to the originating agency after coordination for response to the FOIA requester.

(e) *Government Accountability Office (GAO) information.* The GAO is outside the Executive Branch and not subject to the FOIA. FOIA requests for GAO documents within DoD files will be processed pursuant to the FOIA. If necessary, the DoD Components will consult with the GAO on the releasability of the requested information. The final response will be made by the DoD Component.

§ 286.31 Appeals.

(a) *General.* When an IDA makes an adverse determination, the DoD Components must advise the FOIA requester that the decision may be appealed in writing to a designated appellate authority. The DoD Components will further advise the FOIA requester that copies of the initial FOIA request and the denial letter should be submitted with the appeal.

(b) *FOIA and Privacy Act appeals.* When denials have been made pursuant to the Privacy Act and the FOIA, and

the denied information is in a Privacy Act system of records, appeals will be processed pursuant to the Privacy Act and the FOIA. If the denied information is not maintained in a Privacy Act system of records, the appeal will be processed pursuant to the FOIA.

(c) *Time of receipt.* A FOIA appeal has been received by the DoD Component when it reaches the office of the appellate authority having jurisdiction. Misdirected appeals should be referred to the proper appellate authority.

(d) *Time Limits.* (1) If the FOIA requester submits an appeal after the conclusion of the 30-day time period established by the date of the initial denial letter, the appeal may be considered untimely and closed for that reason. However, the DoD Components may make exceptions on a case-by-case basis. When a FOIA requester is provided several incremental determinations for a single FOIA request, the 30-day time period for the appeal will not begin until the date of the final response.

(2) Final determinations on appeals should be made within 20 working days after receipt. When the DoD Component has a significant number of appeals preventing a response determination within 20 working days, the appeals must be processed in a multi-track system based at a minimum on the three processing tracks established for initial FOIA requests according to § 286.29.

(e) *Delay in responding to an appeal.* If a determination cannot be made within 20 working days, the appellate authority or the appellate authority's representative will acknowledge to the FOIA requester, in writing, the date of receipt of the appeal and the circumstances surrounding the delay.

(f) *Response to FOIA requester.* (1) When an appellate authority makes a final determination to release all or portions of records withheld by an IDA, a written response and a copy of the records so released will be forwarded promptly to the FOIA requester. If the FOIA requester owes outstanding fees from the initial FOIA request, and these fees were not appealed, the appellate authority will advise the FOIA requester that the appeal will be administratively closed until the owed fees are received. The final appellate response will not be made until the fees are paid.

(2) Final denial of an appeal must be made in writing and signed by the appellate authority. The response must include:

(i) The basis for the denial, to include an explanation of the applicable statutory exemption or exemptions invoked pursuant to the FOIA, and of

other appeal matters set forth in § 286.19.

(ii) A determination that the denied information meets the cited criteria and rationale of the governing Executive order if the final refusal is based in whole or in part on Exemption 1 of the FOIA as set out in § 286.25(a).

(iii) A statement that the information being denied does not contain meaningful portions that are reasonably segregable in the case of appeals for total denial of records.

(iv) The FOIA requester's right to judicial review.

(3) The appeal is closed with the final appellate response.

(g) *Consultation with the Office of the General Counsel (OGC), DoD.* (1) Final denial of access involving issues not previously resolved or that the DoD Component knows to be inconsistent with rulings of other DoD Components ordinarily should not be made before consultation with OGC, DoD.

(2) Tentative decisions to deny records that raise new or significant legal issues of potential significance to other government agencies must be discussed with OGC, DoD.

§ 286.32 FOIA litigation.

(a) *General.* FOIA requesters may seek an order from a U.S. District Court to compel release of information after administrative remedies have been exhausted; e.g., when the FOIA requester has filed an administrative appeal of an adverse action, or when the DoD Component has failed to respond within the time limits prescribed by the FOIA. The U.S. Department of Justice, "Freedom of Information Act Guide" provides more detailed guidance on FOIA litigation.

(1) If a DoD Component is served a complaint for a FOIA request that is still open, the DoD Component will administratively close the FOIA request.

(2) FOIA officers should confer with legal counsel or Department of Justice attorneys on whether administrative processing should continue and whether it is appropriate to communicate directly with the FOIA requester or requester's counsel.

(b) *Non-government source information (commercial and financial information withheld pursuant to Exemption 4 of the FOIA as set out in § 286.25(d)).* A FOIA requester may bring suit in a U.S. District Court to compel the release of records obtained from a submitter or records based on information obtained from a submitter. The submitter must be notified promptly of the court action pursuant to Executive Order 12600.

(c) *FOIA litigation notification.* DoD Components served directly with a complaint is filed in a U.S. District Court pursuant to the FOIA will immediately forward copies of the complaint to OGC, DoD and DFOIPO.

Subpart F—Fee Schedule

§ 286.33 General provisions.

(a) *Application.* (1) The fees described in this section apply to FOIA requests submitted pursuant to 32 CFR part 285, and conform to the **Federal Register**, Volume 52, pages 10012–10020.

(2) The fees are not meant to substitute for any other charges established by the Department of Defense, such as Volume 11a of DoD 7000.14–R (available at <http://www.defenselink.mil/comptroller/fmr/>), to recoup direct costs of authorized services provided by the DoD Components that are not FOIA related.

(3) This section does not supersede fees chargeable pursuant to a statute specifically providing for setting the level of fees for particular types of records, such as the Government Printing Office, the National Technical Information Service, or the Defense Logistics Information Service. The DoD Components will inform FOIA requesters of the steps necessary to obtain records from those sources if they are requested.

(b) *Fee assessment.* (1) Fees may not be used to discourage FOIA requesters. Assessable FOIA fees are limited to standard charges for direct search, review (in the case of commercial requesters), and duplication.

(2) Fees are assessed based on the category determined to be appropriate for the FOIA requester's status. The fee status of a FOIA requester who is an attorney representing a client is determined by the fee status of the attorney's client. If the fee status of the client is not clear, then the DoD Components should ask the FOIA requester for clarification. The attorney does not need to reveal the identity of the client, only the client's fee status. If the attorney does not provide enough information to determine the fee status, then the DoD Component may assign commercial fee status to the FOIA requester.

(3) FOIA requests should contain a willingness to pay fees appropriate to that category. The DoD Components will not require a willingness to pay fees if it is determined before processing, based on what is requested and the FOIA requester's fee category, that fees will not be assessed. In those instances where a FOIA requester asks for a fee waiver, in order to facilitate the

processing of the request FOIA requesters are encouraged to provide a willingness to pay fees in the event the fee waiver is denied. This commitment does not impact the FOIA requester's right to file an appeal concerning the fee waiver denial. The categories are:

(i) *Commercial use.* FOIA requesters should indicate a willingness to pay all search, review, and duplication costs when the records are requested for commercial use. Commercial requesters are not entitled to 2 hours of free search time and 100 free pages of reproduction.

(A) In determining whether a FOIA requester properly belongs in this category, the DoD Components must determine how a FOIA requester will use the documents requested. When a DoD Component has reasonable cause to doubt the use of the records sought, or when that use is not clear from the FOIA request itself, the Component should seek additional clarification from the FOIA requester before assigning the FOIA request to a specific category.

(B) Commercial requesters are not entitled to a waiver or reduction of fees based on an assertion that disclosure would be in the public interest. However, because use is the exclusive determining criterion, it is possible that a commercial enterprise may make a FOIA request that is not for commercial use. It is also possible that a non-profit organization or a representative of the news media could make a FOIA request that is for commercial use (e.g., a magazine publisher asking for duty addresses of DoD personnel to solicit them to buy subscriptions to the magazine). Such situations must be addressed on a case-by-case basis.

(ii) *Educational, noncommercial scientific institution, or news media.* FOIA requesters should indicate a willingness to pay duplication charges in excess of 100 pages if more than 100 pages of records are desired.

(A) *Educational institution.* Fees are limited to only reasonable standard charges for document duplication (excluding charges for the first 100 pages) when the FOIA request is made by an educational institution whose purpose is scholarly research. Fees are waived or reduced in the public interest if the fee waiver criteria are met. A FOIA request made by a faculty or staff member or a student of an educational institution that serves an individual research goal and not a scholarly research goal of the institution would not qualify for this fee category. For example, a FOIA request from a student or faculty member of a law school for records related to a person that the school is also representing in court

would not qualify as a FOIA request from an educational institution.

(B) *Non-commercial scientific institution.* Fees are limited to only reasonable standard charges for document duplication (excluding charges for the first 100 pages) when the FOIA request is made by a non-commercial scientific institution whose purpose is scientific research. Fees are waived or reduced in the public interest if the fee waiver criteria are met.

(C) *Representatives of the news media.* Fees are limited to only reasonable standard charges for document duplication (excluding charges for the first 100 pages). Fees are waived or reduced if the fee waiver criteria are met.

(1) Examples of news media entities include television or radio stations broadcasting to the public at large and publishers of periodicals (but only in those instances when they can qualify as disseminators of news) who make their products available for purchase or subscription by the general public. These examples are not meant to be all-inclusive. Moreover, as traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services and the Internet), the DoD Components will include such alternative media in this category.

(2) Freelance journalists may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but the DoD Components may also look to the past publication record of a FOIA requester in making this determination.

(3) Representatives of the news media do not include private libraries, private repositories of government records, information vendors, data brokers, or similar marketers of information, whether to industries and businesses or other entities.

(4) A person or entity that merely disseminates documents received pursuant to the FOIA to an audience would not qualify as a representative of the news media because, in this case, the person or entity is not using editorial skills to turn raw materials into a distinct work. Additionally, applying a label such as "reporter" to a person on staff of an organization that not otherwise meet the definition of a representative of the news media does not create media status for FOIA purposes.

(iii) *All others.* FOIA requesters who do not fit into any of the previous

categories should indicate a willingness to pay assessable search and duplication costs if more than 2 hours of search effort or 100 pages of records are required. Fees are waived or reduced if the fee waiver criteria are met.

(4) The fee provisions of 32 CFR part 310 apply when FOIA requesters ask for information about themselves pursuant to the Privacy Act. In these cases, the only assessable processing fees are for duplication.

(5) In order to be as responsive as possible to FOIA requests while minimizing unwarranted costs to the taxpayer, the DoD Components will analyze each FOIA request to determine the category of the FOIA requester. If the DoD Component determination regarding the category of the FOIA requester is different than that claimed, the Component must:

(i) Notify the FOIA requester to provide additional justification to warrant the category claimed, and that a search for responsive records will not begin until an agreement has been attained relative to the category of the FOIA requester and the FOIA requester indicates a willingness to pay assessable costs appropriate for the category determined by the DoD Component. The statutory time limit will be tolled with this notification and will not continue until the DoD Component receives a response from the FOIA requester.

(ii) Absent further category justification from the FOIA requester and within a reasonable period of time, render a final category determination and notify the FOIA requester of such determination, to include administrative appeal rights of the determination.

(6) The DoD Components must be prepared to provide an estimate of assessable fees if desired by the FOIA requester. While it is recognized that search situations will vary among the DoD Components and that an estimate is often difficult to obtain prior to an actual search, FOIA requesters who desire estimates are entitled to such before committing to a willingness to pay.

(i) If determining a fee estimate involves searching for responsive documents, the time to conduct the search is considered "search" time for fee assessment purposes.

(ii) Should the DoD Components' actual costs exceed the amount of the estimate or the amount agreed to by the FOIA requester, the amount in excess of the estimate or the requester's agreed amount will not be charged without the FOIA requester's agreement.

(7) The DoD Components usually will not require advance payment of any fee (i.e., payment before work is started or

continued on a FOIA request). The DoD Components may require advance payment if:

(i) The FOIA requester has a history of failing to pay fees in a timely fashion (within 30 days of the billing date) on a previous FOIA request; or

(ii) The DoD Component determines that the fee will exceed \$250.

(8) When the DoD Component estimates that allowable charges for a FOIA request may exceed \$250, the DoD Component will notify the FOIA requester of the likely cost and obtain a satisfactory assurance of full payment. The DoD Component may ask for an advance payment of an amount up to the full estimated charges for FOIA requesters with no history of payment or a history of late payments.

(9) When a FOIA requester has an outstanding overdue debt with any DoD Component or federal agency, the DoD Component may administratively close all the FOIA requester's requests after giving notice to the FOIA requester. The FOIA requester will be advised that any administratively closed requests may be resubmitted once the full amount owed, plus any applicable interest, is paid. Interest will be at the rate prescribed in 31 U.S.C. 3717 (also known and referred to in this part as the "Debt Collection Act of 1982"), and confirmed with the applicable finance and accounting offices.

(10) When the DoD Components dispute a requester's fee category assertion, the administrative time limits of the FOIA will begin only after the DoD Component has received a confirmation of willingness to pay fees and satisfaction as to category determination, or fee payments (if appropriate).

(11) The DoD Components may charge for time spent searching for records, even if that search fails to locate records responsive to the FOIA request. The DoD Components may also charge search and review time (in the case of commercial requesters) even if the records located are determined to be exempt from disclosure.

(12) If the DoD Component estimates that processing charges are likely to exceed what the FOIA requester is willing to pay, it will notify the FOIA requester of the estimate of fees broken down by search, review, and duplication. This notice will offer the FOIA requester the opportunity to confer with DoD Component personnel with the object of reformulating the FOIA request to meet his or her needs at a lower cost. The FOIA request is not perfected until a confirmation of willingness to pay all assessable fees is received.

(13) The DoD Components may establish a minimum willingness to pay fee estimates for commercial requesters seeking contract-related documents. Such estimates will be the average of the previous three fiscal years of actual fees charged to commercial requesters seeking contract-related documents for the DoD Component, and will be revised annually. The DoD Components will

notify the public of the minimum fee estimate by publishing it within its FOIA issuances or on DoD Component FOIA Requester Service Center Internet Web sites. FOIA requests from commercial requesters seeking contract-related documents not containing a willingness to pay fee agreement equal to or greater than the minimum estimated amount will not be

considered perfected for fee-related reasons.

(14) DoD FOIA Components will track and assess, if appropriate, hourly processing fees for human activity involving search, review, and other activity, in accordance with the rates in Table 1 of this section.

TABLE 1—FOIA HOURLY PROCESSING FEES

Type	Grade	Hourly rate
Administrative	E-9 and GS-8 and below	\$28
Professional	Contractor/O-1 to O-6/GS-9 to GS-15	56
Executive	O-7 and above and Senior Executive Service	112

(15) Search fee assessments would include manual and electronic searches. Electronic searches, which include any time spent on a computer to conduct a search (including electronic files of documents and database files) would include:

(i) Time spent by a person to create a query or program to conduct an electronic search, including the extraction of specific fields out of a database.

(ii) Time spent by a person to search servers or hard drives using a keyword or other search method.

(iii) Time spent by a person to review documents located during an electronic search to determine if they are responsive.

(16) A DoD Component will not pass on to FOIA requesters any costs of purchasing or maintaining information technology computers if these computers are used in the normal operation of the DoD Component.

(17) The DoD assessable fee for document reproduction is \$0.15 per page. This fee applies only to paper copies of documents provided to FOIA requesters. DoD Components will not assess a document reproduction fee when providing electronic copies of responsive documents to FOIA requesters unless the creation of the electronic copies requires unique security procedures incurring considerable operator time, costing more than printing paper copies. In

these cases, assessable fees are computed by taking the operator time to create the product times the rate in Table 1 of this section.

(18) When the duplication of responsive documents involves duplicating audiovisual materials (e.g., creating a digital video disk (DVD)), assessable fees are computed by taking the operator time to duplicate the product times the rate in Table 1 of this section. Audiovisual materials provided to a FOIA requester need not be in reproducible format or quality. Since the cost of audiovisual materials such as DVDs are small, the DoD Components will not charge for the use of this media, except as provided in Table 2 of this section for technical data.

TABLE 2—FOIA DOCUMENT PRODUCTION FEES—TECHNICAL DATA

Type	Cost
Aerial Photographs, Specifications, Permits, Charts, Diagrams, Technical Drawings, Blueprints, and Other Technical Documents (per page or copy)	\$2.50
Engineering Data:	3.00
Aperture Cards, per card	3.50
Silver Duplicate Negative	1.00
When Keypunched and Verified	3.50
Diaz Duplicate Negative	3.00
When Keypunched and Verified	1.00
35 mm Roll Film, per frame	0.65
16 mm Roll Film, per frame	0.30
Paper Prints (engineering drawings), each (per square foot)	0.10
Paper Reprints of Microfilm Images, each	
Other Technical Data Records:	
Paper Copy (standard size paper up to 8 1/2 × 14, photocopier or printer)	0.15
CD/DVD	5.00
Microfiche Produced, each	3.50
Certification and Validation with Seal, each document	50.00

(c) *Fee restrictions.* (1) No fees may be charged by any DoD Component if the total assessable fees are less than or equal to \$25.

(2) When the DoD Components fails to comply with the 20-day statutory time

limit and no unusual or exceptional circumstances apply, they may not assess search and duplication fees for “all other” requesters or duplications fees for FOIA requests from educational, noncommercial scientific institutions or

representatives of the news media. (See § 286.3 for an explanation of unusual and exceptional circumstances.) When the DoD Components determine a FOIA requester must still pay all assessable fees because unusual or exceptional

circumstances exist, the FOIA requester will be advised of this as early as possible during the processing of the FOIA request.

(3) The DoD Components will not charge more than one FOIA requester for the search and review of the same documents. When two or more requesters ask for the same documents, only the FOIA requester whose FOIA request was first received by the DoD Component can be assessed for search or review fees. All FOIA requesters can be assessed duplication fees. If the first FOIA requester is not assessed search or review fees due to fee status, those fees cannot be passed on to any later FOIA requesters.

(4) FOIA requesters receiving the first 2 hours of search and the first 100 pages of duplication without charge are entitled to this only once per FOIA request.

(5) When duplication involves the creation of audiovisual material or considerable operator time in the creation of CDs, in the case of non-commercial requesters the monetary equivalent of the first 100 free pages is subtracted from the actual computed cost of duplication (see Table 2 of this section). For example, if the total actual duplication cost of a DVD is \$75, the FOIA requester is charged only the amount above \$15 (the first 100 free pages times the paper duplication rate of \$0.15 in Table 2). In this case, that would be \$60.

(d) *Fee waivers.* (1) Documents will be furnished without charge, or at a reduced charge, when the DoD Component determines that waiver or reduction of the fees is in the public interest because furnishing the information is likely to contribute significantly to public understanding of DoD operations or activities and is not primarily in the commercial interest of the FOIA requester. Decisions to waive or reduce fees that exceed the minimum chargeable fee established in paragraph (b)(1) of this section will be made by the DoD Component on a case-by-case basis and after a search for responsive records is completed, consistent with these factors:

(i) Disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government. The factors identified in paragraphs (d)(1)(i)(A) through (D) of this section must be met to some degree to warrant waiving or reducing assessable fees in the public interest.

(A) *Subject of the FOIA request.* The DoD Components should analyze whether the subject matter of the FOIA

request involves issues that will significantly contribute to the public understanding of DoD operations or activities.

(1) FOIA requests for records in DoD possession that were originated by non-government organizations and are sought for their intrinsic content, rather than informative value, will likely not contribute to public understanding of DoD operations or activities. An example of such records might be press clippings, magazine articles, or records forwarding a particular opinion or concern from a member of the public regarding a DoD activity.

(2) Similarly, disclosures of records of considerable age may or may not bear directly on current DoD activities; however, the age of a particular record will not be the sole criterion for denying relative significance consistent with this factor. For instance, an informative issue concerning current DoD activities may be based on historical documentation. FOIA requests of this nature must be closely reviewed consistent with the FOIA requester's stated purpose for desiring the records and the potential for public understanding of DoD operations and activities.

(B) *Informative value of the information to be disclosed.* This factor requires a close analysis of the substantive contents of a record, or portion of the record, to determine whether disclosure is meaningful and will inform the public on DoD operations or activities. While the subject of a FOIA request may contain information that concerns the Department of Defense, it may not always hold great potential for contributing to a meaningful understanding of its operations or activities. Examples include:

(1) A heavily redacted record previously released, containing only random words, fragmented sentences, or paragraph headings.

(2) Identical or nearly identical record in the public domain.

(C) *Contribution to an understanding of the subject by the general public likely to result from disclosure.* The key element in determining the applicability of this factor is whether disclosure will inform, or have the potential to inform, the public rather than simply the individual FOIA requester or a small segment of interested persons. The identity of the FOIA requester is essential in this situation in order to determine whether such FOIA requester has the capability and intention to disseminate the information to the public. Mere assertions of plans to author a book, research a particular

subject, complete doctoral dissertation work, or claims of indigence are insufficient without demonstrating the capacity to further disclose the information in a manner that will be informative to the general public. FOIA requesters should be asked to describe their qualifications, the nature of their research, the purpose of the requested information, and their intended means of dissemination to the public.

(D) *Significance of the contribution to public understanding.* In applying this factor, the DoD Components must differentiate the relative significance or impact of the disclosure against the current level of public knowledge or understanding that exists before the disclosure. In other words, will disclosure on a current subject of wide public interest be unique in contributing previously unknown facts, thereby enhancing public knowledge, or will it basically duplicate what is already known by the general public? A decision regarding significance requires objective judgment, rather than subjective determination, and must be applied carefully to determine whether disclosure will likely lead to a significant public understanding of the issue. The DoD Components must not make value judgments as to whether the information is important enough to be made public.

(ii) Disclosure of the information is not primarily in the commercial interest of the FOIA requester. Determining commercial interest requires consideration of two basic issues:

(A) *Existence and magnitude of a commercial interest.* If the FOIA request is determined to be of a commercial interest, the DoD Components should address the magnitude of that interest to determine if the FOIA requester's commercial interest is primary, as opposed to any secondary personal or non-commercial interest. In addition to profit-making organizations, individual persons or other organizations may have a commercial interest in requesting records. When it is difficult to determine whether the FOIA requester is of a commercial nature, the DoD Components may draw inference from the FOIA requester's identity and circumstances of the FOIA request.

(B) *Primary interest in disclosure.* Once a FOIA requester's commercial interest has been determined, the DoD Components should then determine if the disclosure would be primarily in that interest. This requires a balancing test between the commercial interests of the FOIA request against any public benefit to be derived as a result of that disclosure.

(1) When the public interest is served above and beyond that of the FOIA requester's commercial interest, a waiver or reduction of fees would be appropriate.

(2) Conversely, even if a significant public interest exists, and the relative commercial interest of the FOIA requester is determined to be greater than the public interest, then a waiver or reduction of fees would be inappropriate.

(3) As examples, news media organizations have a commercial interest as business organizations; however, their inherent role of disseminating news to the general public can ordinarily be presumed to be of a primary interest. Therefore, any commercial interest becomes secondary to the primary interest in serving the public. Similarly, scholars writing books or engaged in other forms of academic research may recognize a commercial benefit, either directly or indirectly (through the institution they represent); however, usually such pursuits are primarily undertaken for educational purposes, and the application of a fee charge would be inappropriate. Conversely, data brokers or others who merely compile government information for marketing can be presumed to have an interest primarily of a commercial nature.

(2) The factors and examples used in paragraph (d)(1) of this section are not all inclusive. Each fee decision must be considered on a case-by-case basis and upon the merits of the information provided in each FOIA request. When there is an element of doubt as to whether to charge or waive the fee, the DoD Components should rule in favor of the FOIA requester.

(3) The DoD Components will consider these additional circumstances where waiver or reduction of fees are most likely to be warranted:

(i) A record is voluntarily created to prevent an otherwise burdensome effort to provide voluminous amounts of available records, including additional information not requested.

(ii) A previous denial of records is reversed in total, or in part, and the assessable costs are not substantial (e.g., \$25 to \$50).

(e) *Aggregating FOIA requests.* When a DoD Component reasonably believes that a FOIA requester or, on rare occasions, a group of FOIA requesters acting in concert, is attempting to break a FOIA request down into a series of requests to avoid the assessment of fees, the DoD Component may aggregate any such FOIA requests and charge accordingly. Another example would be if a FOIA requester considered "other"

for fee purposes files multiple FOIA requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment of fees.

(1) One element to be considered in determining whether this belief would be reasonable is the time period when the FOIA requests are made. For example, it would be reasonable to presume that multiple FOIA requests of this type made within a 30-day period are made to avoid fees. For FOIA requests made over a longer period, however, such a presumption becomes harder to sustain and the DoD Components must have a solid basis for determining that aggregation is warranted in such cases.

(2) Before aggregating FOIA requests from more than one FOIA requester, the DoD Components must have a basis to conclude that the FOIA requesters are acting in concert and are acting specifically to avoid payment of fees.

(3) The DoD Components will not aggregate multiple FOIA requests on unrelated subjects from one FOIA requester.

(f) *Effect of the Debt Collection Act of 1982.* The Debt Collection Act of 1982 provides for a minimum annual rate of interest to be charged on overdue debts owed the U.S. government. The DoD Components may levy this interest penalty for any fees that remain outstanding 30 calendar days from the date of billing (the first demand notice) to the FOIA requester of the amount owed. The interest rate will be as prescribed in Volume 11A of DoD 7000.14-R. The DoD Components should verify the current interest rate with their respective finance and accounting offices. After one demand letter has been sent and 30 calendar days have lapsed with no payment, the DoD Components may submit the debt to their respective finance and accounting offices for collection pursuant to the Debt Collection Act of 1982.

(g) *Computation of fees.* The fee schedules in Tables 1 and 2 of this section will be used to compute the assessable fees based on the time actually spent on the search, review (in the case of commercial requesters), and duplication costs associated with processing a given FOIA request. Neither time-based nor dollar-based minimum charges for search, review, and duplication are authorized. The appropriate fee category of the FOIA requester must be determined before computing fees. All time computations will be to the nearest 15 minutes.

(1) The DoD Components will track processing costs for each FOIA request on DD Form 2086, "Record of Freedom

of Information (FOI) Processing Cost," or by using DD Form 2086-2, "Freedom of Information (FOI) Consultation and Request Summary" (available at <http://www.dtic.mil/whs/directives/infomgt/forms/formsprogram.htm>).

(2) DD Form 2086-2 is designed to capture additional data to facilitate the production of the Annual FOIA Report. It is best suited for FOIA Requester Service Centers without an automated accounting system.

(h) *Refunds.* When a DoD Component discovers that it has overcharged a FOIA requester or that a FOIA requester has overpaid, the DoD Component will promptly refund the charge to the FOIA requester by reimbursement methods that are agreeable to the FOIA requester and the Component.

(i) *Collection of fees.* The DoD Components will advise FOIA requesters of assessable fees and provide instructions on fee payment with the final determination. The DoD Components will coordinate with their servicing finance offices to ensure they are employing proper collection procedures.

(j) *Other records.* Direct search and duplication cost for any record not described in paragraph (b) of this section will be computed in the manner described for audiovisual documentary material.

(k) *Costs for Special Services.* Complying with FOIA requests for special services is at the discretion of the DoD Components. Neither the FOIA nor its fee structure covers these kinds of services. Therefore, the DoD Components may recover the costs of special services after a FOIA requester agrees in writing from the FOIA requester to pay for any of these services:

(1) Certifying that records are true copies.

(2) Sending records by special methods such as express mail.

(3) Creating a computer program to merge files with disparate data formats and extract specific elements from the resultant file.

§ 286.34 Fees for technical data.

(a) Technical data may be graphic or pictorial delineations in media, such as drawings or photographs, text in specification or related performance or design-type documents, or computer printouts. Examples of technical data include research and engineering data, engineering drawings, and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identification, and related information and computer software documentation.

(b) Unless technical data qualifies for withholding from public release pursuant to one or more of the FOIA exemptions, it will be released to the FOIA requester after all reasonable costs are paid as authorized by 10 U.S.C. 2328.

(1) All reasonable costs are the full costs to the government for rendering the service, as reflected on DD Form 2086-1, "Record of Freedom of Information (FOI) Processing Cost for Technical Data" (available at <http://www.dtic.mil/whs/directives/infomgt/forms/eforms/dd2086-1.pdf>).

(2) The DoD Components will retain the amounts received by such a release, and will merge it with and make it available for the same purpose and the same time period as the appropriation from which the costs were incurred in complying with the FOIA request.

(3) For personnel rates, see Table 1 of § 286.33.

(4) For document production fees, see Table 2 of § 286.33.

(c) The DoD Components will waive the payment of costs required in paragraph (b) of this section that are greater than the costs that would be required for release of this same information consistent with paragraph (b) of this section if:

(1) The FOIA request is made by a U.S. citizen or a U.S. corporation, and such citizen or corporation certifies that the technical data requested is required to enable it to submit an offer, or to determine whether it is capable of submitting an offer, to provide the product to which the technical data relates to the United States or a U.S. contractor. However, the DoD Components may require the citizen or corporation to pay a deposit in an amount equal to not more than the cost of complying with the FOIA request, which will be refunded upon submission of an offer by the citizen or corporation;

(2) The release of technical data is requested in order to comply with the terms of an international agreement; or

(3) The DoD Component determines, in accordance with paragraph (c) of this section that such a waiver is in the interest of the United States.

§ 286.35 Fees for research data.

Research data that is obtained by the DoD Component from a grant recipient solely in response to a FOIA request may charge the FOIA requester a reasonable fee equaling the full incremental cost of obtaining the research data. The fee should reflect costs incurred by the DoD Component, grant recipient, and sub-recipients. This fee is in addition to any fees the DoD

Component may assess pursuant to the FOIA.

Subpart G—Education and Training

§ 286.36 Purpose.

The purpose of the DoD FOIA educational and training programs is to promote a positive attitude among DoD personnel and raise the level of understanding and appreciation of the DoD FOIA Program. Fulfilling this purpose will improve customer service to members of the public and improve the public trust in the Department of Defense.

§ 286.37 Responsibility.

Each DoD Component establishes educational and training programs on the provisions and requirements of this part. These programs will develop a general understanding and appreciation of the DoD FOIA Program in all DoD Component personnel. The training programs will provide personnel involved in the day-to-day processing of FOIA requests with a thorough understanding of the procedures outlined in this part.

§ 286.38 Scope and principles.

Each DoD Component designs its FOIA educational and training programs to fit the particular requirements of its personnel, dependent upon their degree of involvement in implementing this part. These programs will reach for two target audiences: those personnel who are involved in the day-to-day processing of FOIA requests, and those staff personnel who provide search or review staff-support to the DoD Component FOIA process. The programs will:

(a) Familiarize personnel with the requirements of the FOIA and its implementation by this part and respective DoD Component issuances.

(b) Instruct personnel who act in FOIA matters on the provisions of this part; advise them of the legal hazards involved and the strict prohibition against arbitrary and capricious withholding of information.

(c) Provide procedural and legal guidance and instruction to initial denial and appellate authorities concerning the discharge of their responsibilities.

(d) Emphasize that the processing of FOIA requests must be citizen-centered and results-oriented.

(e) Advise personnel of the penalties for noncompliance with the FOIA.

§ 286.39 Implementation.

To ensure uniformity of interpretation, the DoD Components

will coordinate their educational and training programs with DFOIPO.

Appendix A to Part 286—DoD FOIA Program Components and Addresses

(a) *General.* (1) The DoD does not have a central repository for DoD records. FOIA requesters should address FOIA requests to the FOIA Requester Service Center of the DoD Component that has custody of the record desired. DFOIPO maintains a current list of links to FOIA Requester Service Centers at <http://www.dod.mil/pubs/foi/dfoipo/>. FOIA Requesters Service Centers may assume that FOIA requests addressed to their DoD Component are for their component's records only, and they have no obligation to refer the FOIA request to another DoD Component unless it is clearly a misdirected FOIA request (for example, a Navy FOIA Requester Service Center receives a FOIA request for an Air Force contract). (2) If uncertain as to the ownership of the record, FOIA Requesters Service Centers should contact the OSD/JS FOIA Requester Service Center at 1-866-574-4970, to seek assistance on its ownership. If it still is undetermined, then the FOIA Requester Service Center receiving the request will advise the FOIA requester that they do not have cognizance over the record, and will administratively close the FOIA request.

(b) *DoD Component FOIA Requester Service Center addresses.* Each of these DoD Component heads will serve as, or appoint, an appellate authority in accordance with 32 CFR part 285.

(1) *OSD and the Office of the Chairman of the Joint Chiefs of Staff and Joint Staff.* (i) Address all requests to: OSD/Joint Staff FOIA Requester Service Center, Office of Freedom of Information, 1155 Defense Pentagon, Washington, DC 20301-1155.

(ii) The OSD/Joint Staff FOIA Requester Service Center processes FOIA requests for offices, agencies, and activities not listed in this Appendix. Table 1 of this appendix lists other organizations, activities, or offices serviced by the OSD/Joint Staff FOIA Requester Service Center.

TABLE 1—ADDITIONAL ORGANIZATIONS, ACTIVITIES, OR OFFICES SERVICED BY THE OSD/JOINT STAFF FOIA REQUESTER SERVICE CENTER

Criminal Investigation Task Force
Defense Acquisition University
Defense Advanced Research Projects Agency
Defense Equal Opportunity Management Institute
Defense Legal Services Agency
Defense Microelectronics Activity
Defense Media Activity
Defense Prisoner of War/Missing Persons Office
Defense Security Cooperation Agency
Defense Technology Security Administration
Defense Travel Management Office
DoD Human Resources Activity
DoD Test Resources Management Center
Joint Improvised Explosive Device Defeat Organization
Missile Defense Agency

TABLE 1—ADDITIONAL ORGANIZATIONS, ACTIVITIES, OR OFFICES SERVICED BY THE OSD/JOINT STAFF FOIA REQUESTER SERVICE CENTER—Continued

National Defense University
Office of Economic Adjustment
Pentagon Force Protection Agency
Uniform Services University of the Health Sciences
Washington Headquarters Services
White House Military Office

(2) *Department of the Army.* For records from the Headquarters, U.S. Army, or if there is uncertainty as to which Army activity may have the records, address FOIA requests to: Department of the Army, Freedom of Information Act Office, ATTN: AAHS-RDF, 7701 Telegraph Road, Suite 144, Alexandria, VA 22315-3905.

(3) *Department of the Navy.* Address FOIA requests to the Commanding Officer of any Navy or U.S. Marine Corps (USMC) activity. Clearly indicate that the request is a FOIA request.

(i) For Secretary of the Navy and Chief of Naval Operations, or if there is uncertainty as to which Navy activity may have the records, send FOIA requests to: Department of the Navy, Chief of Naval Operations (DNS-36), 2000 Navy Pentagon, Washington, DC 20350-2000.

(ii) For Headquarters, USMC Department/Division records, or if there is uncertainty as to which USMC unit may have the records, send FOIA requests to: Commandant of the Marine Corps, 3000 Marine Corps Pentagon, Washington, DC 20380-0001.

(4) *Department of the Air Force.* Address FOIA requests to the Commander of any Air Force installation, major command, or field operating agency to the attention of the FOIA Requester Service Center. For records of the Headquarters, U.S. Air Force, or if there is uncertainty as to which Air Force activity may have the records, send FOIA requests to: Department of the Air Force, ATTN: SAF/AAB (FOIA), 1000 Air Force Pentagon, Washington, DC 20330-1000.

(5) *Defense Commissary Agency.* Address all FOIA requests to: Defense Commissary Agency, FOIA/Privacy Act Officer, 1300 E. Avenue, Fort Lee, VA 23801-1800.

(6) *Defense Contract Audit Agency (DCAA).* Address FOIA requests to any DCAA regional office or to DCAA Headquarters. For records from Headquarters, DCAA, or if there is uncertainty as to which DCAA region may have the records, send FOIA requests to: Defense Contract Audit Agency, ATTN: CMR, FOIA Requester Service Center, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060-6219.

(7) *Defense Contract Management Agency (DCMA).* Address FOIA requests to: Defense Contract Management Agency, Building 10500, 3901 A Avenue, Fort Lee, VA 23801.

(8) *Defense Finance and Accounting Service (DFAS).* Address FOIA requests to any DFAS regional office or to Headquarters, DFAS. For records from Headquarters, DFAS, or if there is uncertainty as to which DFAS region may have the records, address FOIA

requests to: Defense Finance and Accounting Service, FOIA/PA Program Manager, Corporate Communications, DFAS-HKC/IN, 8899 E. 56th Street, Indianapolis, IN 46249-0150.

(9) *Defense Health Agency.* Address requests to: Defense Health Agency FOIA Requester Service Center, 7700 Arlington Boulevard, Suite 5101, Falls Church, VA 22042-5101

(10) *Defense Information Systems Agency (DISA).* DISA records may be requested from any DISA field activity or from its headquarters. For records from Headquarters, DISA, or if there is uncertainty as to which DISA field activity may have the records, address FOIA requests to: Defense Information Systems Agency, ATTN: Headquarters FOIA Requester Service Center, P.O. Box 459, Fort George G. Meade, MD 20755.

(11) *Defense Intelligence Agency.* Address FOIA requests to: Defense Intelligence Agency, ATTN: DIAC, DAN-1A (FOIA), Building 6000, Washington, DC 20340-5100.

(12) *Defense Logistics Agency (DLA).* DLA records may be requested from its headquarters or from any of its field activities. For records from Headquarters, DLA, or if there is uncertainty as to which DLA field activity may have the records, address FOIA requests to: Defense Logistics Agency, FOIA Desk Officer, ATTN: DG/FOIA & Privacy Act Team, 8725 John J. Kingman Road, Suite 1644, Ft. Belvoir, VA 22060-6221.

(13) *Defense Security Service.* Address FOIA requests to: Defense Security Service, Office of FOIA and Privacy, 27130 Telegraph Road, Quantico, VA 22134.

(14) *Defense Threat Reduction Agency.* Address FOIA requests to: Defense Threat Reduction Agency, DIR-COSMI-F FOI/Privacy Office, 8725 John J. Kingman Road, Fort Belvoir, VA 22060-6201.

(15) *National Geospatial-Intelligence Agency.* Address FOIA requests to: National Geospatial-Intelligence Agency, FOIA Requester Service Center, 7500 GEOINT Drive, MS S71-OGCA, Springfield, VA 22150-7500.

(16) *National Reconnaissance Office.* Address FOIA requests to: National Reconnaissance Office, Information Review and Release Group, ATTN: FOIA Officer, 14675 Lee Road, Chantilly, VA 20151-1715.

(17) *National Security Agency/Central Security Service.* Address FOIA requests to: National Security Agency/Central Security Service, FOIA/PA Services, DJ4, 9800 Savage Road, Suite 6248, Fort George G. Meade, MD 20755-6248.

(18) *Office of the Inspector General of the Department of Defense.* Address FOIA requests to: Inspector General of the Department of Defense, FOIA Requester Service Center/Privacy Act Office, 4800 Mark Center Drive, Suite 17F18, Alexandria, VA 22350-1500.

(c) *DoD Field Activity and Combatant Command addresses.* The FOIA Requester Service Centers listed in this paragraph (c) respond directly to the public on initial FOIA requests; however, the appellate authority is the DA&M. Accordingly, initial FOIA requests should be sent to the addresses indicated.

(1) *Chairman, Armed Services Board of Contract Appeals.* Address FOIA requests to: Chairman, Armed Services Board of Contract Appeals, Skyline Six Room 703, 5109 Leesburg Pike, Falls Church, VA 22041-3208.

(2) *Defense Technical Information Center.* Address FOIA requests to: Defense Technical Information Center, ATTN: FOIA Program Manager, 8725 John J. Kingman Road, Suite 0944, Fort Belvoir, VA 22062-6218.

(3) *DoD Education Activity.* Address FOIA requests to: DoD Education Activity, Freedom of Information Act Officer, 4800 Mark Center Drive, Alexandria, VA 22350-1400.

(4) *Joint Personnel Recovery Agency.* Address requests to: Joint Personnel Recovery Agency, ATTN: FOIA Requestor Service Center, 10244 Burbeck Road, Building 358, Fort Belvoir, VA 22060-5805.

(5) *National Guard Bureau.* Address FOIA requests to: National Guard Bureau, Attn: NGB-JA (FOIA), 1411 Jefferson Davis Highway, Suite 11300, Arlington, VA 22202-3231.

(6) *United States Africa Command.* Address FOIA requests to: United States Africa Command, ATTN: FOIA Requester Service Center, Unit 29951, APO AE 09751-9951.

(7) *United States Central Command.* Address FOIA requests to: United States Central Command, CCJ6-RD (FOIA), 7115 South Boundary Boulevard, MacDill Air Force Base, FL 33621-5101.

(8) *United States European Command.* Address FOIA requests to: United States European Command, FOIA Requester Service Center, Unit 30400 Box 1000, APO AE 09131.

(9) *United States Northern Command.* Address FOIA requests to: United States Northern Command, FOIA Requester Service Center, 250 Vandenberg Street, Suite B016, Peterson Air Force Base, CO 80914-3804.

(10) *United States Pacific Command.* Address FOIA requests to: United States Pacific Command, FOIA Requester Service Center, ATTN: J0211, Box 64028, Camp H. M. Smith, HI 96861-4028.

(11) *United States Southern Command.* Address FOIA requests to: HQ USSOUTHCOM, Attn: SCJ224 (FOIA), 9301 NW 33d Street, Doral, FL 33172.

(12) *United States Special Operations Command.* Address FOIA requests to: United States Special Operations Command, SOCS-SJS-I/FOIA Requester Service Center, 7701 Tampa Point Blvd., MacDill Air Force Base, FL 33621-5323.

(13) *United States Strategic Command.* Address FOIA requests to: United States Strategic Command, Attn: J006 (FOIA), 901 SAC Blvd., Suite 1A6, Offutt Air Force Base, NE 68113-6000.

(14) *United States Transportation Command.* Address FOIA requests to: United States Transportation Command, Attn: TCJA-FO, 508 Scott Drive, Building 1961, Scott Air Force Base, IL 62225.

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Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

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