



**FREEDOM OF INFORMATION ACT PROGRAM**

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**COMPLIANCE WITH THIS PUBLICATION IS MANDATORY**

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This instruction implements AFPD 37-1, Air Force Information Management; Department of Defense (DoD) Directive 5400.7, May 13, 1988, DoD Freedom of Information Act Program; and DoD Regulation 5400.7-R, October 3, 1990, DoD Freedom of Information Act Program, October 1990, with Change 1. It provides guidance for making records public and for the Air Force Freedom of Information Act (FOIA) Program. It tells how to process FOIA requests and tells the public how to request copies of Air Force records using the FOIA (Title 5, United States Code (U.S.C.), Section 552, as amended). It outlines the requirements for For Official Use Only (FOUO) material. If this instruction conflicts with other Air Force publications, it takes precedence over those that deal with making records public. Send comments and suggested improvements on AF Form 847, Recommendation for Change of Publication, through channels, to SAF/AAIQ, 1610 Air Force Pentagon, Washington DC 20330-1610. Any organization may supplement this instruction. Major commands (MAJCOM), field operating agencies (FOA), and direct reporting units (DRU) send one copy of their supplement to SAF/AAIQ; other commands send one copy of each supplement to the next higher headquarters.

**(AFRES) This supplement implements and extends the guidance of Air Force Instruction (AFI) 37-131, 16 February 1995. The AFI is printed word-for-word without editorial review. Air Force Reserve supplementary material is indicated by "(AFRES)" in boldface type. This supplement describes Air Force Reserve procedures to be used in conjunction with the basic instruction. Upon receipt of this integrated supplement discard the Air Force basic.**

**SUMMARY OF REVISIONS**

This instruction gives the FOIA manager authority to sign "no records" determinations (paragraphs 2.5 and 12.2); clarifies procedures when using FOIA exclusions (paragraph 11.2); changes procedures for identifying routinely deployable and sensitive units (paragraph 10.6.3); specifies rank for disclosure decision over submitter's objection (paragraph 10.4.1); clarifies host-tenant relationship (paragraph 14); clarifies appeal routing procedures for Headquarters USAF and SAF (paragraph 24.2). A ★ indicates revisions from the previous edition.

**★(AFRES) This revisions changes the HQ AFRES Records Management Division (IMD) to Records Management Branch (IMQD) throughout the supplement.**

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**1. General Guidance.** The Air Force discloses its records in its possession and control to the public, except those records exempt under the FOIA which, if released, would cause an identifiable harm. Make discretionary disclosures of exempt information whenever possible. (Discretionary releases are generally not appropriate for exemptions 1, 3, 4, 6, and 7(C)). A discretionary release to one requester will prevent withholding the same record if someone else requests it. Answer all requests for information and records promptly. Handle requests in a customer-friendly manner. Get misrouted FOIA requests to the FOIA Office immediately. Do not withhold a record simply because it might suggest administrative error or inefficiency or cause embarrassment. Do not deny a request just because the record is stored in a computer.

- Submits required reports to the Office of the Assistant to the Secretary of Defense (Public Affairs).
- Provides guidance and instructions to major commands (MAJCOM) and field operating agencies (FOA).

2.4. MAJCOM and FOA commanders implement this instruction in their commands and agencies.

2.5. FOIA managers: **★(AFRES) The Chief, Records Management Branch, Headquarters Air Force Reserve, is the Command Freedom of Information Manager. The records manager (RM) at all levels is the Freedom of Information Act (FOIA) manager.**

**2. Responsibilities:**

2.1. The Administrative Assistant to the Secretary of the Air Force (SAF/AA) takes overall responsibility for making sure the Air Force complies with the FOIA.

2.2. The Office of the General Counsel to the Secretary of the Air Force (SAF/GCA) makes final decisions on appeals.

★2.3. The Director of Information Management (SAF/AAI), through the Access Programs Office of the Administrative Communications and Records Management Division, SAF/AAIQ:

- Administers procedures described in this instruction.

- Control and process FOIA requests.
- Obtain recommendations from the office of primary responsibility (OPR) for records.
- Provide a reading room for inspecting, copying, and giving copies of records to requesters.
- Provide training.
- Review publications to make sure they comply with this instruction.
- Conduct periodic program reviews.
- Approve or deny fee waivers.

- Assess and collect fees.
- Send extension notices to requesters.
- Submit required reports.
- Make final determinations on "no records" responses.

★2.6. OPRs:

- Coordinate the release or denial with the offices of collateral responsibility (OCR) and with the Staff Judge Advocate (SJA) and FOIA office on proposed denials.
- Provide requested records.
- Help the disclosure authority determine whether to release record; and act as declassification authority when appropriate.

2.7. Disclosure authorities determine whether to release records and provide them to the FOIA office.

**(AFRES) Within this command, disclosure authority is vested in the Commander, HQ AFRES and delegated as follows:**

**2.7.1. In Headquarters Air Force Reserve:**

**2.7.1.1. The Vice Commander.**

**2.7.1.2. Assistant to Vice Commander.**

**2.7.1.3. Directors.**

**2.7.1.4. Heads of special staff offices.**

**★2.7.1.5. Chief, Records Management Branch, Directorate of Information Management, Headquarters Air Force Reserve.**

**2.7.2 In subordinate units:**

**2.7.2.1. Numbered Air Force commanders.**

**★2.7.2.2. Wing commanders and commanders of geographically separated groups (do not further delegate).**

**★2.8. Initial denial authorities: (AFRES) AFRES Vice Commander, AFRES Assistant Vice Commander, and Director of Information Management are designated as denial authorities.**

- Make final decisions to deny records.

- Tell requesters the nature of records or information denied, exemption supporting the denial with reason, and appeal procedures.

**3. Material Not Covered by the FOIA:**

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

3.2. Administrative tools for creating, storing, and retrieving records, if not created or used as sources of information about organizations, policies, functions, decisions, or procedures of DoD. Normally computer software, including source code, object code, and listings of source and object codes, regardless of medium, are not agency records. This does not include the supported data that is processed and produced by such software and that in some instances may be stored with the software. Use the glossary in attachment 1 when computer software is defined as an agency record.

3.3. Personal notes of an individual not subject to agency creation or retention requirements, created and maintained primarily for the convenience of an agency employee, and not distributed to other agency employees for their official use.

3.4. Information stored in a computer for which there is no existing computer program for retrieval of the requested information.

3.5. If other procedures for processing requests for material not covered by FOIA exist:

- Log the request and refer the request outside of the FOIA to the proper office.
- Acknowledge the requester's letter, tell the individual where you referred the request, and that the material is not a record under the FOIA.

3.6. If no alternative release procedures exist, process the request under FOIA by advising the requester that materials are not agency records and give the requester appeal rights.

**4. FOIA Requests.** Under FOIA, members of the public, including foreign citizens, military and civilian personnel acting as private citizens, organizations and businesses, and individual members of the Congress, for themselves or constituents, may request records in writing. Federal agencies or fugitives from the law cannot make FOIA requests.

4.1. Requesters should not use Government equipment, supplies, stationery, postage, telephones, or official mail channels to make FOIA requests.

**5. Submitting FOIA Requests.** Submit written requests that reasonably describe the desired records and include a statement on fees. Address letters to the FOIA office of the activity that has the record. List other addressees to save time.

**6. Processing Requests Under FOIA and Privacy Act (PA).** Process requests under the Act that gives the most information. If the requester cites both Acts, address each in the reply.

**7. Describing Records.** The requester is responsible for identifying the desired record. He or she should sufficiently describe the record to help locate it with a reasonable amount of effort. Generally a reasonable description contains enough information for an organized, nonrandom search. Offices must make reasonable efforts to find the records described. This means searching all activities and locations most likely to have the records, including staged or retired records. If the description is unclear, ask for more specific information. When possible, tell the requester what information would help.

**8. Creating a Record.** The Air Force is not required to create, compile, or obtain a record from outside the Air Force to fulfill a request. You may want to create a new record when it would be a more useful response to the requester or is less burdensome for the agency than providing an existing record and the requester agrees. Do not charge the requester more for creating a record than you would charge for the existing record.

8.1. Apply a standard of reasonableness for electronic data when there is a question on whether you are creating, programming, or formatting a record. If you can respond with a "business as usual" approach, process the request, otherwise offer the requester appeal rights.

**9. Special Disclosure Procedures.** Some instructions have disclosure procedures for certain types of records. Refer to those instructions for specific disclosure procedures when you process FOIA requests. The only reason to deny a request is a FOIA exemption.

9.1. Process FOIA requests from foreign citizens, foreign governments, their representatives, or international commands under this instruction, and coordinate with your foreign disclosure office. If the command has no foreign disclosure office, refer the request to 11MSS/MSIS (FOIA) for SAF/IAD coordination through the MAJCOM FOIA office.

9.2. If requests from foreign government officials do not cite the FOIA, refer them to your foreign disclosure office and notify the requester.

9.3. If you have a non-US Government record, coordinate with the record's originator before releasing it (see paragraph 10.4.1). This includes records created by foreign

governments and organizations like the North Atlantic Treaty Organization (NATO) and North American Aerospace Defense (NORAD). Coordinate release of foreign government records with the US Department of State through the MAJCOM FOIA office. Coordinate release or denial of Letters of Offer and Acceptance (LOA) with SAF/IA through 11 MSS/MSIS (FOIA).

**10. FOIA Exemptions.** Denial authorities may withhold records or information when an identifiable harm would result by disclosure, and the records are exempt under 5 U.S.C 552(b).

**10.1. Exemption (1)--Classified Records.** Records properly and currently classified in the interest of national defense or foreign policy, as authorized by executive order and implementing instructions. Apply this exemption when disclosing information by itself or in the context of other information that could reasonably be expected to damage national security.

10.1.1. To make a sound decision, review the record paragraph by paragraph for releasable information. Review all unclassified parts before release to see if they are exempt. Before releasing a reviewed and declassified document, draw a single black line through all the classification markings, so they are still legible and stamp the document "Unclassified." Review material, if appropriate, to determine if it should be classified, even though it was not classified when requested. AFI 31-401, *Managing the Information Security Program*, tells how to classify and declassify records. Check to see if information from foreign sources is classified. Delete exempt parts of records and disclose the rest if it does not distort meaning and you can reasonably assume that a skillful, knowledgeable person could not reconstruct the information deleted. Denial letters must say that unauthorized disclosure of such information could reasonably be expected to cause damage to national security and cite the appropriate executive order paragraph(s) as authority for classification. When denying a whole classified record, release all unclassified parts that would cause no identifiable harm. Coordinate with the local information security specialist when invoking this exemption for consistency of classification policy and procedures.

10.1.2. When simply knowing whether a record exists or not reveals classified information, use the "Glomar" (refusal to confirm or deny) response. Apply it consistently, not only when a record exists but also when a record does not exist. Otherwise, the pattern of using a "no record" response when a record does not exist, and a "refusal to confirm or deny" when a record does exist will disclose exempt information. Cite the FOIA exemption when you use the "Glomar" response.

**10.2. Exemption (2)--Internal Personnel Rules and Practices.** Exempt information falls in two categories:

- "High" (b)(2) protects records which, if disclosed, would substantially hinder the effective performance of a significant function of the DoD by risking circumvention of a statute or Air Force instruction or policy.
- "Low" (b)(2) is for trivial internal administrative matters of no genuine public interest and the process of releasing such records would constitute an unwarranted administrative burden. You can only use the "low" (b)(2) exemption before fully processing the requested records. Otherwise, you may eliminate the administrative burden justification.
- Financial data private employers provide in confidence for local wage surveys, used to set and adjust pay schedules for prevailing wage rate employees of the DoD.
- Scientific and manufacturing processes or developments concerning technical or scientific data or other information submitted with a research grant application or with a report during research.
- Computer software qualifying as a record under this regulation that is copyrighted under the *Copyright Act of 1976* (17 U.S.C. 106), the disclosure of which would adversely affect its market value.

**10.3. Exemption (3)--Other Statutes.** Records of matters that a statute specifically exempts from disclosure by terms that permit no discretion on the issue of withholding or according to defined standards for withholding or referring to particular types of matters we must withhold. When using this exemption, cite both exemption (b)(3) and the specific statute.

**10.4. Exemption (4)--Confidential Commercial Information.** Records with trade secrets and commercial or financial information submitted by a person or entity outside the Federal Government on a privileged or confidential basis that, if released, is likely to cause substantial competitive harm to the submitter of the information or impair the government's future ability to obtain necessary information. Examples of exempt information follow:

- Trade secrets that are commercially valuable plans, formulas, processes, or devices used for making, preparing, compounding, or processing trade commodities and are the product of innovation or substantial effort and were given in confidence.
- Commercial or financial information given in confidence, in connection with loans, bids, contracts, or proposals; or privileged information, such as trade secrets, inventions, discoveries, or other proprietary data.
- Statistical data and commercial or financial information concerning contract performance, income, profits, losses, and expenditures, offered and given in confidence by a contractor or potential contractor.
- Personal statements made during inspections, investigations, or audits, if such statements are given in confidence by the individual and kept confidential, because they reveal trade secrets or commercial or financial information normally considered confidential or privileged.
- ★10.4.1. Before releasing information submitted from outside the Air Force:
  - Write to the submitter of the data for views on releasability and include attachment 2 with your letter.
  - Tell the requester that we must give the submitter of the data the opportunity to comment before the Air Force decides whether to release the information.
  - Give the submitter a reasonable period of time (no more than 30 calendar days) to object to release and provide justification.
  - If the submitter does not respond, write that you have not received a reply, tell the submitter of the decision to release with the reason and give the expected release date (at least 2 weeks from the date of your letter).
  - If the submitter objects, but the Air Force disclosure authority considers the records releasable, tell the submitter before releasing the data. Include in the letter a brief explanation and a release date at least 2 weeks from the date of the letter. A person equal or higher in rank to the denial authority makes the final decision to disclose over submitter's objection.

**10.5. Exemption (5)--Inter- or Intra-Agency Records.**

Intra-agency or inter-agency memoranda or letters that, according to recognized legal privileges are not routinely released to a party in litigation with the Air Force or DoD. If such a record or part of such a record would be made available routinely through the discovery process in the course of litigation with the agency, release it. In the discovery process, litigants get from each other information relevant to issues in a trial or hearing. If the information is only made available through the discovery process by special court order, then it is exempt. Release factual records or parts unless the information is privileged or otherwise exempt. Generally, release a direction or order from a superior to a subordinate, though contained in an internal communication, if it forms policy guidance or a decision, but is not a discussion of preliminary or other matters that would compromise decision making. Consult your SJA about whether Exemption 5 material would be routinely available through the discovery process. Here are examples of exempt information:

- The deliberative process privilege--those parts of records with internal advice, opinions, evaluations, or recommendations that reveal Air Force or DoD deliberations.
- Those nonfactual parts of Air Force personnel evaluations of contractors and their products.
- Advance information of a speculative, tentative, or evaluative nature on such matters as proposals to buy, lease, or otherwise acquire and dispose of materials, real estate, facilities, or functions, if such information gives private personal interests an unfair competitive advantage or impedes legitimate governmental functions. Generally, you cannot use this privilege to withhold factual information. However, you may withhold facts when they are so interconnected with deliberative information that disclosing facts necessarily discloses the Air Force's deliberative process or when facts and deliberative information are so interconnected that separating them would be uninformative or redundant.
- Official reports of inspection, audits, investigations, or surveys on safety, security, or internal management, administration, or operation of the Air Force.
- The attorney work product privilege--records an attorney prepares, or supervises the preparation of, in contemplating or preparing for administrative proceedings or litigation.
- The attorney-client privilege--confidential communication between an attorney and client. For example, a commander expresses concerns

in confidence to his or her judge advocate and asks for a legal opinion. The legal opinion and everything the commander tells the judge advocate in confidence qualify.

- Unlike deliberative process privilege, you may withhold both facts and opinions in attorney work product or privileged communications.
- Trade secrets or other confidential research, development, or commercial information the Air Force or DoD owns, whose premature release probably would affect the Air Force's or DoD's negotiating position or other commercial interests.
- Computer software qualifying as a record under this regulation which is deliberative in nature, if its release would inhibit decision making. In this case, closely examine the use of the software to ensure its deliberative nature.
- Planning, programming, and budget information involving defense planning and resource allocation.

**10.6. Exemption (6)--Invasion of Personal Privacy.**

Personnel, medical, and similar personal information in other files whose release to the public clearly invades personal privacy. To decide whether to release personal information, balance the privacy interest against what its release would tell the public about how the Air Force functions or about the conduct of an Air Force employee (the public interest). Withhold records only when the privacy interest exceeds the public interest. Do not use this exemption to protect a deceased person's privacy, but you may use it to protect the privacy of the deceased person's family in rare instances. Generally let a person (or their representative) see their own personnel, medical, or similar files and withhold information from the subject only using 5 U.S.C. 552a, *The Privacy Act of 1974* (see AFI 37-132, *Air Force Privacy Act Program*).

10.6.1. Withhold names and duty addresses of personnel serving overseas or in sensitive or routinely deployable units. Routinely deployable units normally leave their permanent home stations on a periodic or rotating basis for peacetime operations or for scheduled training exercises conducted outside the United States or US territories on a routine basis. Units based in the United States for a long time, such as those in extensive training or maintenance activities, do not qualify during that period. Units designated for deployment on contingency plans not yet executed and units that seldom leave the United States or US territories (e.g., annually or semiannually) are not routinely deployable units. However, units alerted for deployment outside the United States or US territories during actual execution of a contingency plan or in support of a crisis operation qualify. The way the Air Force

deploys units makes it difficult to determine when a unit that has part of its personnel deployed becomes eligible for denial. The Air Force may consider a unit deployed on a routine basis or deployed fully overseas when 30 percent of its personnel has been either alerted or actually deployed. In this context, alerted means that a unit has received an official written warning of an impending operational mission outside the United States or US territories.

10.6.2. Sensitive units are primarily involved in training for special activities or classified missions, including, for example, intelligence-gathering units that collect, handle, dispose of, or store classified information and materials, as well as units that train or advise foreign personnel.

★10.6.3. Each MAJCOM and FOA will establish a system and OPR(s) to identify units in their command qualifying for this exemption. Appropriate OPRs could include Directors of Operations, Plans and Programs, and Personnel. The resulting list of nonreleaseable units will be reviewed and updated in January and July and provided to the MAJCOM or FOA FOIA office. This listing will be in ASCII format on a 3½- or 5¼-inch floppy disk (double sided, high density), which contains the unit's eight-position Personnel Accounting Symbol (PAS) code, with one PAS code per line (record)(8-byte record). The MAJCOM or FOA FOIA manager will forward an electronic copy of the list of nonreleaseable units to AFMPC/RMI to be included in the personnel data system. The MAJCOM and AFMPC FOIA offices will use it to determine releasable lists of names and duty addresses. This reporting requirement is exempt from licensing with a report control symbol (RCS) in accordance with AFI 37-124, *The Information Collections and Reports Management Program; Controlling Internal, Public, and Interagency Air Force Information Collections*, paragraph 2.11.10.

**10.7. Exemption (7)--Investigative Records.** Records or information gathered for law enforcement purposes but only when releasing these records would probably:

- Interfere with enforcement proceedings.
- Deprive a person of the right to a fair trial or an impartial judgment.
- Invade personal privacy unnecessarily.
- Identify a confidential source, including a state, local, or foreign agency or authority or any private institution that gives confidential information.
- Disclose information 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.

- Disclose methods for law enforcement investigations or prosecutions.
- Disclose guidelines for law enforcement investigations or prosecutions if the release would probably encourage circumvention of the law.
- Endanger an individual's life or physical safety.

10.7.1. You may use this exemption to prevent disclosure of documents not originally created for, but later gathered for law enforcement purposes.

**10.8. Exemption (8)--Financial Institutions.** Those records contained in or related to examination, operation, or condition reports prepared by, on the behalf of, or for the use of, an agency that regulates or supervises financial institutions.

**10.9. Exemption (9)--Wells.** Records with geological and geophysical information and data, including maps, concerning wells.

## 11. FOIA Exclusions:

11.1. Under two limited situations, requests for law enforcement records are not subject to disclosure under FOIA:

- Requests for law enforcement records when the investigation involves a possible criminal violation, the subject is unaware of the investigation, and disclosing the record's existence could interfere with enforcement.
- Requests for informant records a criminal law enforcement agency keeps under the informant's name or personal identifier made by a third party using the informant's name or personal identifier, but only when the informant's status as an informant has not been officially confirmed.

★11.2. In these cases, do not use denial procedures; instead, say you found no records. Coordinate with the SJA on these cases. When you write to the requester, do not give the statutory citation for the exclusion nor state your reliance on an exclusion.

**12. Denials.** Only denial authorities may withhold information. Denial authority level is at the deputy chiefs of staff and chiefs of comparable offices or higher at HQ USAF, and MAJCOM and FOA commanders. These officials may name an additional official as a denial authority. Send SAF/AAIQ a letter with the position titles only. Only the Administrative Assistant to the Secretary of the Air Force can approve a request for more than one additional denial authority. Send those requests, with justification, to SAF/AAIQ.

12.1. When denying information, delete only the exempt parts of a record, release what remains, and let the requester know that you are providing all reasonably segregable, releasable parts of the record. Clearly show the requester where you deleted information.

★12.2. Denial letters must include the reason for the denial and cite the statutory exemption. Only authorized denial authorities sign denial letters. FOIA managers may sign "no records" responses. Denial letters and "no records" responses must also include an appeal paragraph that:

- Tells the requester to address appeals to the Secretary of the Air Force, through the FOIA office of the activity that issued the denial or "no records" response.
- Tells the requester to appeal within 60 calendar days from the date of the letter and to include reasons for reconsideration.
- Asks the requester to attach a copy of the response.

**13. Freedom of Information Act Annual Report: ★(AFRES) FOIA managers submit the FOIA report to HQ AFRES/IMQD by the 5th workday in January.**

13.1. MAJCOM and FOA FOIA managers submit a calendar-year report on 3½- or 5¼-inch disk using the FOIA System. Send the report by 10 January to SAF/AAIQ. The report control symbol (RCS) is DD-PA(A)1365. Attachment 3 gives instructions for the report.

13.2. SAF/AAIQ submits the report to the Office of the Assistant to the Secretary of Defense (Public Affairs) Directorate for Freedom of Information and Security Review on DD Form 2564, **Annual Report - Freedom of Information Act**.

★14. **Host-Tenant Relationship.** The host base FOIA manager logs, processes, and reports FOIA requests for tenant units. The host base FOIA office refers all recommended denials and "no records" appeals to the tenant MAJCOM FOIA manager.

14.1. This host-tenant relationship does not apply to the Air National Guard and Air Force Reserve or to disclosure authorities for specialized records, such as the Air Force Audit Agency and the Air Force Office of Special Investigations.

**15. Processing FOIA Requests.** All FOIA offices use the FOIA system to track and manage FOIA requests. AFM 4-196 is the *Freedom of Information (FOIA) System DSD: R022/F8 End Users Manual*.

15.1. After receiving a FOIA request, the FOIA manager:

15.1.1. Records the date and time of receiving the request, logs the request in the FOIA system and sets a suspense date. For more than 10 FOIA requests, sets up a first-in, first-out system to process the requests in the order received.

15.1.2. Considers a request received when the FOIA office responsible for processing the request receives it; and when the requester states a willingness to pay fees set for his or her category (see paragraph 16), has paid past FOIA debts, and has reasonably described the requested records.

15.1.3. Determines the fee according to the requester's category, writes to requesters who have not made arrangements to pay for the information and whose fees are more than \$15, telling them the category and cost of the request.

15.1.4. Answers fee waiver requests before processing. Asks for more justification, if needed to make a good decision. Do not consider this notice a denial.

15.1.5. Attaches DD Form 2086, **Record of Freedom of Information (FOI) Processing Cost**, or DD Form 2086-1, **Record of Freedom of Information (FOI) Processing Cost for Technical Data**, to each request. The OPR must complete and return this form to the FOIA office. These forms give the fees for charging, if any, and processing costs you use to prepare the FOIA annual report.

15.1.6. Writes the requester to acknowledge receipt of the request if the date or postmark (whichever is later) is more than 10 workdays ago and informs the requester of any unusual problems.

15.1.7. Tells the requester if the record is not sufficiently described and asks for more information. If possible, offers to help the requester identify the requested records and tells what kind of information makes searching for a record easier.

15.1.8. Sends the request to the OPR who searches for the record and decides whether to release it.

15.1.9. Sends classified records with no OPR or functional equivalent to 11 MSS/MSIS, through the MAJCOM or FOA FOIA office, for HQ USAF/SP review. Telephones 11 MSS/MSIS before sending the records.

15.1.10. Tells the requester in a letter sent within 10 workdays after receiving the request of the final decision to release or deny the records.

15.1.11. When answering requests for lists of names and duty addresses, tells requesters as early as possible about the mass mailing restrictions outlined in DoD Manual

4525.8-M/AF Supplement, *DoD Official Mail Manual*, April 18, 1994.

15.1.12. Grants 10 additional workdays for one or more of three reasons:

- All or part of the requested records are not at the installation processing the request.
- Fulfilling the request means collecting and reviewing an enormous number of records.
- Other Air Force activities or other agencies need to be involved in deciding whether to release the records.

15.1.13. Sends the requester a letter within 10 workdays, giving the reason for the delay and a date (within 20 workdays after receiving the request) when the requester can expect a final decision.

15.1.14. Records extensions and reasons for them in the FOIA system.

15.1.15. Coordinates with the public affairs office if the requested records are potentially newsworthy or if the news media sent the request.

15.1.16. Sends releasable records to requesters with a bill (if appropriate).

15.1.17. Sends a request the OPR wants to deny through the MAJCOM or FOA FOIA office to the denial authority for a decision. The package must include:

- The request.
- A copy of the requested records. **(AFRES) If only portions of the information are recommended for denial, send two legible complete copies of the requested records, one of which is redacted to clearly identify segments recommended for denial and each, different FOIA exemption/reason for each segment or portion recommended for release denial. Dispatch file within 3 workdays from date of receipt by the processing FOIA manager.**
- The OPR's and SJA's written recommendations. **(AFRES) Obtain reserve SJA's written recommendation. If this would result in an extension of more than 10 days, seek written recommendation from an active duty SJA. This may be done by fax (if records are not voluminous) or mail.**
- The exemption cited.

- The reason for denial.

15.2. The OPR locates the information and recommends its release. In cases where several OPRs have functional responsibility for the information, the primary OPR is the one responsible for most of the information in the document. The OPR:

- Works with the offices of collateral responsibility (OCR) inside and outside the Air Force, considers the opinions and information they provide, and makes the final release decision.
- Forwards records that need coordination with other Air Force functional areas and outside agencies to the MAJCOM or FOA FOIA office, which sends them to the appropriate FOI office for review and return for final decision.
- Answers each functional request and follows FOIA denial procedures for records withheld.

**16. Referrals.** A FOIA manager refers requests to another FOIA office after consulting with them when the request asks for records or information originated by someone other than the activity receiving the request or when an OPR finds records in a search that belong to another activity.

16.1. Refer FOIA requesters to sources that can provide unaltered publications and processed documents, such as maps, charts, regulations, and manuals to the public, with or without charge. For example, people can obtain documents published in the Federal Register without using the FOIA. The National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, sells current Air Force standard numbered (departmental) publications, but does not stock superseded, obsolete, rescinded, classified, FOUO, limited (L), or "X" distribution Air Force publications. FOIA requests for these publications go through normal FOIA channels to the OPR for a release recommendation.

16.2. Usually, tell the requester about the referral, identify the record referred as security permits, and tell the requester to expect an answer from the agency or activity receiving the referral.

16.3. If a request would involve many referrals, tell the requester where to address the request; don't refer it yourself.

16.4. Before releasing records or information originated with the National Security Council (NSC) or the White House, refer them through the Office of the Assistant to the Secretary of Defense (Public Affairs) Directorate for Freedom of Information (OATSD[PA]DFOISR), Washington DC 20301. The OATSD(PA) will consult with them and reply back to you.

16.5. The General Accounting Office (GAO) is outside the Executive Branch and not subject to the FOIA. However, if the FOIA manager receives a FOIA request directly from the public or referred from GAO for GAO documents that contain Air Force or DoD information, process the request under FOIA.

**17. Categorizing Requesters.** Requesters' fees depend on which group they belong to:

- **Category 1: Commercial.** Requesters pay all search, review, and duplication. To decide who belongs in this category find out how these requesters will use the requested documents. If you are unsure how the requester plans to use the records or the request itself does not clearly state plans, seek additional information before you categorize the request.
- **Category 2: Educational or Noncommercial Scientific Institution or News Media.** Requesters get the first 100 copies free and pay for additional copies. These requesters do not pay search or review charges. Requesters who use requested records to write and spread news are not considered commercial requesters.
- **Category 3: Others.** Requesters get the first 2 hours of search and the first 100 copies free. These requesters do not pay review charges.

17.1. Analyze each request to categorize the requester. If you think the requester's category differs from what the requester claims, ask the individual for more justification and say you cannot begin searching for records until you have agreed on the category. If the requester does not send the FOIA manager more justification in reasonable time (normally, 30 calendar days), the manager makes a final decision and notifies the requester of the decision and of the right to appeal it.

17.2. Tell requesters that you cannot begin to answer their requests until they state they will pay the costs set for their category.

**18. Fee Assessment.** The FOIA limits charges to search, review, and duplication based on the requester's category.

18.1. Estimate fees if the requester asks. Do not charge an amount more than the estimate or the amount the requester agrees to unless the requester first agrees to pay more.

18.2. Search time includes all time spent looking for records to respond to a request. Personnel must search efficiently to minimize both the Air Force's and the requester's costs. Search efforts must be thorough and include all locations and activities most likely to have the requested records. Searches may include retired or staged records. Time spent reviewing documents to decide

whether statutory exemptions apply counts as review time, not search time. For computer searches, determine the first 2 free hours against the salary scale of the person operating the computer.

18.2.1. FOIA managers may charge for search time for the appropriate category (and review time for commercial requesters only), if the requester agreed in advance to pay, even if:

- A search does not uncover the requested records.
- The records found are entirely exempt from disclosure.

18.2.2. When estimated search charges exceed \$25, tell the requester the estimated fees, unless the requester has already indicated a willingness to pay fees as high as the estimate. When feasible, offer the requester the opportunity to restate the request so that the search costs less.

18.3. Review is the process of examining documents to determine if one or more of the statutory exemptions allows withholding. It also includes the time it takes to excise information. Review does not include time spent resolving general legal or policy issues on exemptions. FOIA managers may only assess commercial requesters for initial review. This does not include reviews at the appeal stage for exemptions already applied, but it may include review to apply an exemption not previously cited.

18.4. Requesters pay only for copies of the records they actually receive. Copies may be on paper, microfiche, audiovisual, or machine-readable magnetic tape or disk, among other media. FOIA managers must try hard to ensure copies are clear. If you cannot possibly provide a clear copy, tell the requester that the copy is the best available and that he or she can make an appointment to review the master copy. For copies of computer tapes and audiovisual material, charge the actual copying cost, including the operator's time.

18.5. Before beginning or continuing work on a request, FOIA managers may require advance payment from requesters:

- Who have not paid fees on time (usually within 30 calendar days) in the past.
- Whose estimated fees are over \$250, unless the requester always pays promptly. In that case, give the requester an estimate and ask the requester to ensure full payment.

18.6. If the requester has always paid promptly, the FOIA manager sends the records and requests payment at the same time.

18.7. If a requester has not paid on time in the past, FOIA managers may ask the requester to:

- Pay (or show proof of payment of) outstanding bills, plus interest, for past FOIA requests. Consult 31 U.S.C. 3717 for interest rates and coordinate with your accounting and finance office.
- Pay estimated fees in advance.

18.8. If a requester has no payment history, or has not paid on time in the past, FOIA managers may ask the requester to pay after processing the request but before sending the records.

18.9. When employees with different hourly rates search for information for an "Other" (Category 3) requester, waive the cost of the most expensive 2 hours of search. Requesters receive the first 2 hours search (Category 3 requesters only) and the first 100 pages of duplication (Categories 2 and 3) free only once per request. If you complete your work and refer the request to another FOI office for action, tell that FOI office how much time you spent searching and how many pages you copied for the requester.

**19. Aggregating Requests.** A requester may make many requests at once, each seeking parts of a document or documents, just to avoid paying fees. When a requester or a group of requesters breaks a request into many requests to avoid paying, the FOIA manager may combine the requests and charge accordingly. Before combining requests, be sure you have solid evidence that the requesters are trying to avoid fees. Do not combine one requester's multiple requests on unrelated subjects. Contact SAF/AIQ before taking action.

**20. Fee Waivers.** Waive fees for requesters of all categories when:

- FOIA costs total \$15 or less.
- A record is created voluntarily to save the cost of supplying many records.
- A record previously withheld is released at small cost (e.g., \$15 to \$30).
- Releasing the information is likely to contribute significantly to public understanding of the operations or activities of the DoD and is not primarily in the commercial interest of the requester.

20.1. A waiver in the public interest establishes the two basic requirements below. Both must be met before you waive or reduce fees. Use the following six factors. Begin with the first four factors to determine "public interest" and

then use the two remaining factors to decide if release "is not primarily in the commercial interest of the requester."

**20.1.1. Requirement 1.** Is releasing the information in the public interest because it will probably contribute significantly to public understanding of the government's operations or activities?

**20.1.1.1. Factor 1--Subject of the Request.** Analyze whether the subject matter will significantly contribute to the public understanding of DoD operations or activities. Requests made for records in DoD's possession originated by nongovernment organizations for their intrinsic content rather than informative value will likely not contribute to public understanding of DoD operations or activities. Press clippings, magazine articles, or records expressing an opinion or concern from a member of the public regarding a DoD activity are such records. Releasing older records may be relevant to current DoD activities, so do not discount it under this factor simply because it is old. For example, a requester might want historical records to study how a certain current DoD policy evolved. Review these requests closely, comparing the requester's stated purpose for the records and the potential for public understanding of DoD operations and activities.

**20.1.1.2. Factor 2--Informative Value.** Closely analyze a record's substantive contents to determine whether disclosure is meaningful, and will inform the public on DoD operations or activities. While the subject of a request may contain information concerning DoD operations or activities it may not always help people understand these operations or activities. One example is a heavily edited record, containing only random words, fragmented sentences, or paragraph headings. Another example is information already in the public domain.

**20.1.1.3. Factor 3--General Public Will Understand the Subject Better.** Will the records' release inform, or have the potential to inform, the public or just the requester or a few interested persons? Knowing the requester's identity is essential to determine whether he or she plans to, and knows how to, communicate information to the public. Plans to write a book, research a subject, work on a doctoral dissertation, or indigency are not reason enough to waive fees. The requester must tell how he or she plans to disclose the information to the general public. You may ask requesters for their qualifications, the nature of their research, the purpose of requesting information, and their plans for making information public.

**20.1.1.4. Factor 4--Significance of Public Understanding.** Balance the relative significance or impact of the disclosure against the level of public knowledge or understanding that exists before disclosure. Records released on a subject of wide public interest should contain previously unknown facts that increase public knowledge. They should not duplicate what the general public already knows. Determining the significance of

information requires objective judgment. Take care to determine whether disclosure will probably lead to significant public understanding of the issue. Do not judge whether the information is important enough to be public.

20.1.2. **Requirement 2.** Does disclosure of the information primarily mean profit for the requester?

20.1.2.1. **Factor 5--Commercial Interest.** If you determine the requester will use the records to make a profit, then decide if it's primary, as opposed to a personal or noncommercial interest. In addition to profit-making organizations, individuals, and other organizations may have a commercial interest in certain records. When you have difficulty deciding whether a request is commercial in nature, the requester's identity and the circumstances of the request may help. You may write to the requester and ask for more details.

20.1.2.2. **Factor 6--Primary Interest.** After you have determined the requester's commercial interest, decide if it is primary. Commercial interests are primary only if the requester's profit clearly overrides a personal or nonprofit interest. You must decide whether the commercial interest outweighs any benefit to the public as a result of disclosure. Waive or reduce fees when the public gains more than the requester. If the requester's commercial interest is greater than the public interest, do not waive or reduce fees even if public interest is significant. As business organizations, news organizations have a commercial interest; however, you can assume that their primary interest is giving the general public news. Scholars writing books or engaging in other academic research, may profit, either directly or indirectly (through the institution they represent); however, such work is primarily done for educational purposes. Usually you would not assess scholars fees. Assume that brokers or others who compile government information for marketing use the information for profit.

20.1.3. Decide each fee waiver case by case. When you have doubts about waiving or charging a fee, favor the requester.

**21. Transferring Fees to Accounting and Finance Offices.** The Treasurer of the United States has two accounts for FOIA receipts. Use account 3210, *Sales of Publications and Reproductions, Freedom of Information Act*, for depositing fees for publications and forms described in Federal Account Symbols and Titles. Use receipt account 3210 *Fees and Other Charges for Services, Freedom of Information Act*, to deposit fees for searching for, copying, and reviewing records to provide information not in existing publications or forms. Add your disbursing office's prefix to the account numbers. Deposit all FOIA receipts in these accounts except those from industrially funded and nonappropriated funded activities. Deposit these receipts in the applicable fund.

**22. Fee Rates.** These fees apply only to FOIA requests. AFPAM 37-145, *Schedule of Fees for Copying, Certifying and Searching Records and Other Documentary Material*, contains the fee schedule for non-FOIA services. Refer to AFI 37-132 for guidance on fees for PA requests.

### 22.1. Search and Review:

- Clerical (E9 and GS-8 and below) -- \$12 an hour.
- Professional (01-06 and GS-9-GS/GM-15) -- \$25 an hour.
- Executive (07 and GS-16/ES1 and above) --\$45 an hour.

22.1.1. Computer search fees are based on direct costs of the central processing unit, input-output devices, and memory capacity of the actual computer configuration. Also include the salary scale (equal to hourly rates above) for the computer operator or programmer who planned and carried out the search.

### 22.2. Duplication:

- Preprinted material -- \$.02 per page.
- Office copies -- \$.15 per page.
- Microfiche -- \$.25 per page.
- Computer copies (tapes or printouts) -- actual cost of duplicating the tape or printout, including operator's time and tape cost.

22.2.1. Copying cost for audiovisual documents is the actual cost of reproducing the material, including the wage of the person doing the work. Audiovisual materials given to a requester need not be reproducible.

**22.3. Special Services.** Includes certifying that records are true copies and sending records by express mail. You may recover their costs if the requester clearly asks for and agrees to pay for them.

**23. Technical Data.** Technical data does not include computer software or data used for contract administration, such as financial and management information. If the FOIA requires, release technical data (not including critical technology with military or space application) after the requester pays all reasonable costs for search, duplication, and review.

### 24. Technical Data Fee Rates:

24.1. Clerical search and review -- \$13.25 an hour. Minimum charge -- \$8.30.

- Professionals and executives--set rate before beginning at actual hourly rate. Minimum charge is ½ of hourly rate.

★24.2. Copying rates depend on the type of record. If this list does include the product, use the fair market value.

- Aerial photographs, specifications, permits, charts, blueprints, and other technical documents -- \$2.50 each.
- Microfilmed engineering data aperture cards (silver duplicate negatives) -- \$.75 per card.
- Silver duplicate negatives, keypunched and verified -- \$.85 per card.
- Diazo duplicate negatives -- \$.65 per card.
- Diazo duplicate negatives keypunched and verified -- \$.75 per card.
- Engineering data on 35 mm roll film -- \$.50 per frame.
- Engineering data on 16 mm roll film -- \$.45 per frame.
- Engineering paper prints and drawings -- \$1.50 each.
- Reprints of microfilm indices -- \$.10 each.
- Office copies -- \$3.50 for up to six images. Each additional image -- \$.10.
- Typewritten pages -- \$3.50 each.
- Certification and validation with seal -- \$5.20.
- Hand-drawn plots and sketches -- \$12 an hour or less.
- **Fee Waivers for Technical Data.** Waive the fees if they are more than regular FOIA fee rates if a citizen or a US corporation asks and certifies the need for technical data to submit (or assess its ability to submit) an offer to supply the United States or its contractor with a product related to the technical data. You may ask the citizen or corporation for a deposit of not more than what fulfilling the request costs. When the citizen or corporation submits the offer, refund the deposit. Also waive charges:
- If a requester needs technical data to meet the terms of an international agreement.

- If you decide, using regular FOIA fee waiver guidance, that a waiver is in the interest of the United States.

**25. Appeals.** Requesters may appeal denials of records, category determinations, fee waiver requests, and "no records" determinations by writing to the Office of the Secretary of the Air Force, within 60 calendar days after the date of the denial letter. A requester who sends the appeal after 60 calendar days, should explain the reason for the delay.

**(AFRES) HQ AFRES/IMQD processes all appeals from any denial of records, category determinations, fee waiver requests, and "no records" determinations.**

25.1. Requesters who appeal have exhausted all administrative remedies within the Department of the Air Force and The Office of the General Counsel to the Secretary of the Air Force (SAF/GC) makes a final decision. Requesters must address all appeals to the Office of the Secretary of the Air Force, through the MAJCOM or FOA FOIA office that denied the request. Requesters should attach a copy of the denial letter to their appeal and give their reasons for appealing.

★25.2. After coordinating with the local SJA (and the OPR, if appropriate), MAJCOM and FOA FOIA offices, and OPRs at HQ USAF and SAF, send all appeals, including late submissions, to Air Force Legal Services Agency (AFLSA/JACL) for determination, unless they have reconsidered and approved the request. MAJCOM and FOA FOIA offices give appeals priority. They do not have 20 workdays to process an appeal.

25.3. Requesters must appeal denials involving Office of Personnel Management's controlled civilian personnel records to the Office of the General Counsel, Office of Personnel Management, 1900 E Street NW, Washington DC 20415.

25.4. When sending appeals to AFLSA/JACL, attach:

- The original appeal letter and envelope.
- The initial request and any attachments.
- The denial letter, with an index of the denied material, if applicable.
- Copies of all records you have already provided; or if the records are massive (several cubic feet) and AFLSA/JACL agrees, an index or description of released records.
- Copies of all administrative processing documents, including extension letters and opinions and recommendations about the request.

- Copy of the denied record or denied portions of it marked to show what you withheld. If the records are massive and AFLSA/JACL agrees, you may substitute a detailed description of the documents.
- A point-by-point discussion of factual and legal arguments the requester's appeal contains and, proof that the denial authority considered and rejected these arguments and why.
- An explanation of the decision making process for intragency documents denied under the deliberative process privilege and how the denied material fits into that process.

#### 25.5. Assemble appeal packages:

- Arrange attachments in the order listed in paragraph 25.4. Use tabbed dividers to separate attachments.
- List all attachments in your cover letter.
- Include the name of the person to contact and a phone number.

25.6. AFLSA/JACL sends the appeal to the Office of the General Counsel, who makes a final determination. The law requires a final decision within 20 workdays after receipt of the appeal letter. The 20 days begins when the denial authority's FOIA office receives the appeal. The time limit includes processing actions by all levels. If a final determination cannot be made within 20 days, AFLSA/JACL writes to the requester to acknowledge the appeal's receipt and to explain the delay. If SAF/GC upholds the denial, in whole or in part, SAF/GC tells the requester, explains reasons for the denial, and tells the requester about judicial review rights. If SAF/GC grants the appeal, that office tells the requester in writing and releases, or directs the release of, the record.

25.7. For "no records" determinations, search again, if warranted, or verify the first search. Include in the package you send to AFLSA/JACL any letters that show you systematically tried to find records. Tell, for example, what areas or offices you searched and how you conducted the search--manually, by computer, by telephone, etc.

25.8. For appeals to denials of fee waiver requests, fully account for actual and estimated costs with a copy of the DD 2086 or DD Form 2086-1.

**26. For Official Use Only (FOUO).** FOUO is not a classification. Information marked FOUO must meet the criteria for exemptions 2 through 9, or you cannot withhold it. Do not consider or mark any other records FOUO.

26.1. Originators mark records when they create them to call attention to FOUO content. An FOUO marking does not mean you must withhold a record under the FOIA. You still need to review a requested record. Examine records with and without markings to identify information that needs protection and is exempt from public release or to decide whether discretionary release is appropriate.

26.1.1. Information in a technical document that requires a distribution statement per AFI 61-204, *Disseminating Scientific and Technical Information*, must show that statement. The originator may also mark the information FOUO, if appropriate.

26.1.2. Mark an unclassified document containing FOUO information "For Official Use Only" at the bottom, on the outside of the front cover (if any), on each page containing FOUO information, on the back page, and on the outside of the back cover (if any).

26.1.3. In unclassified documents, the originator may also mark individual paragraphs that contain FOUO information to alert users and assist in review.

26.1.4. In a classified document, mark:

- An individual paragraph that contains FOUO, but not classified information, by placing "(FOUO)" at the beginning of the paragraph.
- The top and bottom of each page that has both FOUO and classified information, with the highest security classification of information on that page.
- "FOUO" at the bottom of each page that has FOUO but not classified information.

26.1.5. If a classified document also contains FOUO information or if the classified material becomes FOUO when declassified, place the following statement on the bottom of the cover or the first page, under the classification marking: **NOTE:** If declassified, review the document to make sure material is not FOUO and not exempt under AFI 37-131 before public release.

26.1.6. Mark other records, such as computer printouts, photographs, films, tapes, or slides, "For Official Use Only" or "FOUO" so the receiver or viewer knows the record contains FOUO information.

26.1.7. Mark FOUO material sent to authorized persons outside the DoD with an explanation typed or stamped on the document:

This document contains information  
EXEMPT FROM MANDATORY DISCLOSURE  
UNDER THE FOIA.  
Exemption(s).....applies (apply).

(Further distribution is prohibited without the approval of [enter OPR]).

26.2. DoD components, officials of DoD components, and authorized DoD contractors, consultants, and grantees send FOUO information to each other to conduct official DoD business. Tell recipients the status of such information, and send the material in a way that prevents unauthorized public disclosure. Make sure documents that transmit FOUO material call attention to any FOUO attachments. Normally, you may send FOUO records over facsimile equipment. To prevent unauthorized disclosure, consider attaching special cover sheets (i.e., AF Form 3227, **Privacy Act Cover Sheet**, for Privacy Act information), the location of sending and receiving machines, and whether authorized personnel are around to receive FOUO information. FOUO information may be passed to officials in other departments and agencies of the executive and judicial branches to fulfill a government function. Mark the records "For Official Use Only," and tell the recipient the information is exempt from public disclosure under the FOIA and whether it needs special handling. If the records are subject to the PA, refer to AFI 37-132 for PA disclosure policies.

26.3. AFI 90-401, *Air Force Relations With Congress*, governs the release of FOUO information to members of the Congress and AFI 65-401, *Relations With the General Accounting Office*, governs its release to the General Accounting Office (GAO). Review records before releasing to see if the information warrants FOUO status. If not, remove FOUO markings. If the material still warrants FOUO status, mark the records FOUO and explain the appropriate exemption and marking to the recipient.

26.4. When you use the US Postal Service, package records with FOUO information so their contents are safe. If FOUO information is not combined with classified information, individuals may send FOUO information by First Class Mail or Parcel Post. Bulky shipments, such as FOUO directives or testing materials, that qualify under postal regulations may be sent by Fourth Class Mail.

26.5. Mark each part of a message that contains FOUO information. Unclassified messages containing FOUO information must show the abbreviation "FOUO" before the text begins.

26.6. To safeguard FOUO records during normal duty hours, place them in an out-of-sight location if people who do not work for the government come into the work area. After normal duty hours, store FOUO records to prevent unauthorized access. File them with other unclassified records in unlocked files or desks, etc., if the Government or a Government contractor provides normal internal building security. When there is no internal security, locked buildings or rooms usually provide adequate after-hours protection. For additional protection, store FOUO material in locked containers such as file cabinets, desks, or bookcases.

26.7. When a record is no longer FOUO, remove the markings or indicate on the document the markings no longer apply. Try to tell everyone who has the records that their status has changed.

26.8. Destroy FOUO materials by tearing them up so no one can put them back together and throwing them into trash containers. When the information needs more protection, local authorities may use other methods. However, balance the expense of extra protection against the degree of sensitivity of the FOUO information in the records. You may recycle FOUO material. Safeguard the FOUO documents or information until recycling to prevent unauthorized disclosure. Recycling contracts must include agreements on how to protect and destroy FOUO and PA materials.

26.9. Unauthorized disclosure of FOUO records is not an unauthorized disclosure of classified information. Air Force personnel must act to protect FOUO records under their control from unauthorized disclosure. When unauthorized persons gain access to these records, administrators find out who is responsible and take disciplinary action where appropriate. Unauthorized disclosure of FOUO information containing PA information may also result in civil or criminal sanctions against individuals or the Air Force. Tell the originating organization when its records are improperly disclosed.

**27. Forms Prescribed.** DD Form 2086, **Record of Freedom of Information (FOI) Processing Cost**; DD Form 2086-1, **Record of Freedom of Information (FOI) Processing Cost for Technical Data**; and DD Form 2564, **Annual Report - Freedom of Information Act** are prescribed.

DAVID S. SIBLEY, Brig Gen, USAFR  
Assistant Vice Commander

## GLOSSARY OF REFERENCES, ABBREVIATIONS, ACRONYMS, AND TERMS

### References

Air Force Manual (AFM) 4-196, *Freedom of Information (FOIA) System DSD: R022/F8 End User Manual*  
 Air Force Instruction (AFI) 31-401, *Managing the Information Security Program*  
 Air Force Policy Directive (AFPD) 37-1, *Air Force Information Management*  
 AFI 37-124, *The Information Collections and Reports Management Program; Controlling Internal, Public, and Interagency Air Force Information Collections*  
 AFI 37-132, *Air Force Privacy Act Program*  
 Air Force Pamphlet (AFPAM) 37-145, *Schedule of Fees for Copying, Certifying, and Searching Records and Other Documentary Material*  
 AFI 61-204, *Disseminating Scientific and Technical Information*  
 AFI 65-401, *Relations with the General Accounting Office*  
 AFI 65-503, *US Air Force Cost and Planning Factors*  
 AFI 90-401, *Air Force Relations with Congress*  
 DoD Manual 4525.8-M/AF Supplement, *DoD Official Mail*, April 18, 1994  
 DoD Directive 5400.7, *DoD Freedom of Information Act Program*, May 13, 1988  
 DoD Regulation 5400.7-R, *DoD Freedom of Information Act Program*, October 1990, With Change 1  
 Title 5 United States Code (U.S.C.) 552, *The Freedom of Information Act*  
 Title 5 U.S.C. 552a, *The Privacy Act*  
 Title 10 U.S.C. 130, *Unclassified Technical Data with Military or Space Application*  
 Title 17 U.S.C. 106, *Copyright Act of 1976*

### Abbreviation or Acronym    Definition

#### Acronym

AFI	Air Force Instruction
AFLSA/JACL	Air Force Legal Services Center, General Litigation Division
AFP	Air Force Pamphlet (Old designation)
AFPAM	Air Force Pamphlet
AFPD	Air Force Policy Directive
CFR	Code of Federal Regulations
DFARS	Defense Federal Acquisition Regulation Supplement
DoD	Department of Defense
FOA	Field Operating Agency
FOIA	Freedom of Information Act
FOUO	For Official Use Only
GAO	General Accounting Office
IDA	Initial Denial Authority
LOA	Letter of Offer and Acceptance
MAJCOM	Major Command
NATO	North Atlantic Treaty Organization
NORAD	North American Aerospace Defense Command
NSC	National Security Council
NTIS	National Technical Information Service
OATSD(PA)	Office of the Assistant Secretary to the Secretary of Defense (Public Affairs)
OCR	Office of Corollary Responsibility
OPM	Office of Personnel Management
OPR	Office of Primary Responsibility
PA	Privacy Act
SJA	Staff Judge Advocate
U.S.C.	United States Code

### Terms

**Appellate Authority**--The Office of the General Counsel to the Secretary of the Air Force, who decides FOIA appeals.

**Commercial Request**--A Category 1 request from, or on behalf of, one who seeks information that furthers the commercial, trade, or profit interest of the requester or the person represented.

**Denial**--A determination by a denial authority not to disclose requested records in its possession and control.

**Determination**--The decision to grant or deny all or part of a request from the public for records.

**Disclosure**--Providing access to, or one copy of, a record.

**Disclosure Authority**--Official authorized to release records.

**Educational Institution Request**--A Category 2 request from a preschool, 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 one or more scholarly research programs.

**Electronic Data**--Records or information created, stored, and retrieved by electronic means. Electronic records do not include computer software used as a tool to create, store, or retrieve electronic data.

**FOIA Manager**--The person who manages the FOIA Program at each organizational level.

**FOIA Request**--A written request for records from the public that cites or implies the FOIA.

**Functional Request**--A request for records that does not specifically cite or imply the FOIA.

**Glomar Response**--A reply that neither confirms nor denies the existence or nonexistence of the requested record. A "Glomar" response may be used with FOIA exemptions (1), (6), and (7)(C).

**Initial Denial Authority (IDA)**--Persons in authorized positions who may withhold records under the FOIA.

**News Media Request**--A Category 2 request from a person whose job is gathering news for a publishing or broadcasting organization that supplies news to the public. News media also includes free lance journalists who can prove they have good reason for expecting a news organization to publish their work.

**Noncommercial Scientific Institution Request**--A Category 2 request from a noncommercial institution that operates solely to conduct scientific research not intended to promote a particular product or industry.

**Other Request**--A Category 3 request from anyone who does not fit into the Commercial category or the Noncommercial Scientific or Educational Institutions or News Media category.

**Partial Denial**--Decision to withhold part of a requested agency record.

**Public Interest**--When releasing official information sheds light on how an agency performs its statutory duties and informs citizens about what their government is doing or reveals an Air Force official's conduct. Normally there is no public interest in personal information if it does not reveal a person's conduct in their job.

**Records**--The products of data compilation, such as all books, papers, maps, and photographs, machine readable materials or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the US Government in connection with the transaction of public business and in the agency's possession and control at the time it receives the request. Records such as notes, working papers, and drafts kept as historical evidence of actions are subject to the FOIA, and may be exempt from release under 5 U.S.C. 552(b)(5) if an identifiable harm exists by their release. Computer software rarely qualifies as an agency record. Evaluate each case. Two examples of software as a record are:

- Data embedded in the software cannot be extracted without the software.
- Software that reveals information about DoD organizations, policies, functions, decisions, or procedures, such as computer models used to forecast budget outlays, to calculate retirement system costs, or to optimize models on travel costs.

**Search--**To look for a requested record or a specific section of a record. You can search over the telephone, manually, or with computer searches.

**Statutory Time Limits--**The 10 workdays after receiving the request to tell the requester whether the records are released or denied. This term also covers the additional 10-workday extension allowed for reasons in paragraph 15.1.12. The 10 days begin when the FOIA manager receives a properly filed request with a reasonable description of the requested records and with the requester's stated willingness to pay fees or fees paid. If the requester disagrees with his or her category or wants fees reduced or waived, the 10 days begin after resolving these issues.

**Technical Data--**Information (including computer software documentation) that is scientific or technical in nature and recorded on any medium.

**REQUIREMENTS OF 5 U.S.C. 552(b)(4)**  
**(Send With Letter to Submitters)**

A2.1. *The Freedom of Information Act (FOIA)* requires Federal agencies to provide their records, except those specifically exempted, for the public to inspect and copy.

A2.2. Section (b) of the Act lists nine exemptions that are the only basis for withholding records from the public.

A2.3. In this case, the fourth exemption, 5 U.S.C. 552(b)(4), may apply to records or information the Air Force maintains. Under this exemption, agencies may withhold trade secrets and commercial or financial information they obtained from a person or organization outside the government which is privileged or confidential.

A2.4. This generally includes information provided and received with the understanding that it will be kept privileged or confidential.

A2.5. Commercial or financial matter is "confidential" and exempt if its release will probably:

- Impair the Government's ability to obtain necessary information in the future.
- Substantially harm the source's competitive position or impair some other legitimate Government interest.

A2.6. The exemption may be used to help the source when public disclosure will probably cause substantial harm to its competitive position. Examples of information that may qualify for this exemption include:

Commercial or financial information received in confidence with loans, bids, contracts, or proposals, as well as other information received in confidence or privileged, such as trade secrets, inventions, discoveries, or other proprietary data.

- Statistical data and commercial or financial information concerning contract performance, income, profits, losses, and expenditures, offered and received in confidence from a contractor or potential contractor.
- Personal statements given during inspections, investigations, or audits, received and kept in confidence because they reveal trade secrets or commercial or financial information normally considered confidential or privileged.
- Financial data that private employers give in confidence for local wage surveys used to set and adjust pay schedules for the prevailing wage rate of DoD employees.
- Information about scientific and manufacturing processes or developments that is technical or scientific or other information submitted with a research grant application, or with a report while research is in progress.
- Technical or scientific data a contractor or subcontractor develops entirely at private expense, and technical or scientific data developed partly with Federal funds and partly with private funds, in which the contractor or subcontractor retains legitimate proprietary interests per 10 U.S.C. 2320-2321 and *Defense Federal Acquisition Regulation Supplement (DFARS)*, chapter 2 of 48 CFR 227.4.
- Computer software copyrighted under the Copyright Act of 1976 (17 U.S.C. 106), the disclosure of which would adversely impact its potential market value.

A2.7. If release of the subject material would prejudice your commercial interests, give detailed written reasons that identify the specific information and the competitive harm it will cause to you, your organization, or your business. The Act requires we provide any reasonably segregable part of a record after deleting exempt parts. So, tell us if deleting key words or phrases would adequately protect your interests.

A2.8. If you do not prove the probability of substantial harm to your competitive position or other commercial interests, we may be required to release the information. Records qualify for protections case by case.

**PREPARING THE ANNUAL FREEDOM OF INFORMATION ACT (FOIA) REPORT TO THE CONGRESS  
(RCS: DD-PA[A]1365)**

Use the FOIA System to prepare this report. Send the report to MAJCOM FOIA offices on 3½- or 5¼-inch disk with a paper copy. MAJCOMs send a consolidated report to the Access Programs Office, SAF/AAIQ, on 3½- or 5¼-inch disk with a paper copy.

**INITIAL DETERMINATIONS**

**Total Requests.** Give the total number of FOIA requests you responded to during the year. Include all responses, except those advising of time extensions.

**Granted in Full.** Give the total number of FOIA requests completed during the year that you responded to by releasing requested records in their entirety. Include requests granted by your activity, and still requiring action by another activity, i.e., referrals, transfers.

**Denied in Part.** (For MAJCOM and FOA use only) Give the total number of FOIA requests completed during the year that you responded to by withholding by part of the records because they are exempt. Do not include initial denials of fee waiver requests.

**Denied in Full.** (For MAJCOM and FOA use only) Give the total number of FOIA requests completed during the year that you responded to by withholding entire records because they are exempt. Do not include initial denials of fee waiver requests.

**Other Reasons.** Give the total number of FOIA requests completed during the year where you responded using one or more of the "Other Reasons" (explained below).

**Total Actions.** Give the total of "Granted in Full," "Denied in Part," "Denied in Full," and "Other Reasons."

**EXEMPTIONS INVOKED ON INITIAL DETERMINATIONS** (For MAJCOM and FOA use only)

Give the total number of times you cited each exemption in letters to requesters whose request you fully or partly denied. Give the total for each exemption. Because you may cite more than one exemption, the total may exceed the "Denied in Part" and "Denied in Full" total.

**b(3) STATUTES INVOKED ON INITIAL DETERMINATIONS** (For MAJCOM and FOA use only)

List specific statutes (by United States Code number, not title) supporting denials citing 5 U.S.C. 552(b)(3) and the total number of times you cited each. The total will equal the number under (b)(3) in "Exemptions." Using certain statutes requires citing specific sections (Wiretap, Atomic Energy Act, Patent Secrecy). To qualify as a (b)(3) exemption, the statute must clearly state that the information covered will not be disclosed. Do not use the following as (b)(3) statutes:

- 5 U.S.C. 552a - *Privacy Act*
- 17 U.S.C. 101 et. seq. - *Copyright Act*
- 18 U.S.C. 793 - *Gathering, Transmitting or Losing Defense Information*
- 18 U.S.C. 794 - *Gathering or Delivering Defense Information to Aid Foreign Governments*
- 18 U.S.C. 1905 - *Trade Secrets Act*
- 28 U.S.C. 1498 - *Patent and Copyright Cases*

**OTHER REASONS**

Give the totals for each "other reasons" category:

- **Transferred Request (Other Reason 1).** Total number of times you transferred a request to an agency outside the Air Force.
- **No Records (Other Reason 2).** Total number of times your search found no relevant records or there was no statutory obligation to create a record.
- **Failure of Requester to Reasonably Describe Record (Other Reason 3).** Total number of times requesters did not reasonably describe requested records.
- **Failure by Requester to Comply with Published Rules and/or Directives (Other Reason 4).** Total number of times requesters did not follow published rules about time, place, fees, and procedures.
- **Request Withdrawn (Other Reason 5).** Total number of times requesters withdrew requests or appeals.
- **Not an Agency Record (Other Reason 6).** Total number of times you told requesters that requested information was not an agency record under the FOIA. Paragraph 3 states what is "Not an Agency Record." Do not list "No Record" responses under this category.
- **Total.** This number may equal or exceed "Other Reasons" total because you may use more than one "other reason" response in your letters.

**INITIAL DENIAL AUTHORITIES BY PARTICIPATION** (For MAJCOM and FOA use only)

Give the name, title, and organization of each individual who signed a partial or total denial letter and the total number of times that person signed partial or total denial letters. The total will equal the sum of "Denied in Part" and "Denied in Full." For military personnel, abbreviate the rank; for civilians, use Civ. Spell out the organization's name; do not use abbreviations, other than "US," "HQ," and "AF." Use the following format:

Jones, John J. MG                      Commander                      8  
 HQ US Air Forces in  
 Europe

**APPEALS AND COURT ACTIONS** For SAF/AAIQ use only. (AFLSA/JACL gives SAF/AAIQ information.)

**FEES COLLECTED FROM THE PUBLIC** Give the total fees collected, including search, review, and copying fees.

**FOI PROGRAM COSTS**

**PERSONNEL COSTS**

- Estimated Manyears
- Manyear Costs

Include manyears and salary costs for all personnel involved in planning, program management and administrative handling of FOIA requests. To compute manyears and cost, use the total annual composite rate from AFI 65-503, or the military, and the OPM salary table for civilians (add 16 percent to civilian annual salary table). On a worksheet, break down FOIA personnel by grade, total persons in that grade, their annual salary, and the percent of time they work on FOIA. Do not report your computations. Sample:

Grade	Total Persons	Salary	X	% of Time	=	Total Costs
GS-7	2	\$37,452	X	80%	=	\$29,962
GS-5	1	\$15,118	X	30%	=	\$4,535
O-5	1	\$78,597	X	10%	=	\$7,860
				120%		\$42,357

For "Estimated Manyears," add the percent column and divide the total by 100. Sample:

120% divided by 100 = 1.2 manyears.

In the example, the total "Estimated Manyears" is 1.2 and the "Manyear Costs" are \$42,357.

***ESTIMATED MANHOOR COSTS BY CATEGORY***

- Search Time
- Review and Excising
- Coordination and Approval
- Correspondence and Form Preparation
- Other Activities
- Total of Above

Total costs for each category from DD Forms 2086 and 2086-1. They include FOIA costs for all other personnel involved in processing FOIA requests, except for those included in Manyear Costs.

***OVERHEAD AND TOTAL FOR MANYEAR COSTS AND ESTIMATED MANHOOR COSTS*** For SAF/AAIQ use only.

***OTHER CASE RELATED COSTS***

- Computer Search Time
- Office Copy Reproduction
- Microfiche Reproduction
- Printed Records
- Computer Copy
- Audiovisual Materials
- Total costs for each category from DD Forms 2086 and 2086-1.
- Other

Under "Other" report one total. Include such costs as postage, per diem associated with FOIA-related travel, training, transportation, long distance telephone calls, special mail services, printing (i.e., forms related to FOIA processing). Postage costs include replies to requesters, transferring or referring requests, sending a recommendation for denial to higher headquarters, sending reports, etc.

***SUBTOTAL, OVERHEAD AND TOTAL FOR OTHER CASE-RELATED COSTS*** For SAF/AAIQ Use Only.

***TOTAL COSTS*** For SAF/AAIQ Use Only

***FORMAL TIME LIMIT EXTENSIONS***

- Location
- Volume

- Consultation
- Court (AFLSA/JACL gives figures to SAF/AAIQ).
- Total

Give total number of formal time extensions.