BY ORDER OF THE SECRETARY OF THE AIR FORCE

DoD REGULATION 5400.7/AIR FORCE SUPPLEMENT/AFSPCSUP1

1 MAY 2000

DOD FREEDOM OF INFORMATION ACT PROGRAM

OPR: HQ AFCIC/ITC (Ms. Anne Rollins) Certified by: HQ USAF/SCXX (Lt Col Terry G. Pricer, Sr.)

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Department of Defense

REGULATION

NUMBER 5400.7-R

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DA&M

SUBJECT: DOD Freedom of Information Act Program

FOREWORD

This Regulation is reissued under the authority of DoD Directive 5400.7, "DoD Freedom of Information Act Program," September 29, 1997. It provides guidance on the implementation of the Freedom of Information Act, as amended by the "Electronic Freedom of Information Act Amendments of 1996." The changes, since the last printing in May 1997, are indicated by italics.

This Regulation applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Inspector General of the Department of Defense (IG, DoD), the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as "the DoD Components"). This Regulation is effective immediately; it is mandatory for use by all the DoD Components.

Heads of DoD Components may elect to issue supplementary instructions deemed essential to the accommodation of perceived requirements peculiar to respective DoD Components. Any such instruction may not conflict with the provisions of this Regulation. Copies of DoD Components' supplementary instruction shall be forwarded to the below address for review within 120 days of the date of this Regulation.

DoD 5400.7-R, "Department of Defense Freedom of Information Act Program," May 1997 is hereby canceled.

Recommendations for amendments shall be forwarded through appropriate channels to the Director, Freedom of Information and Security Review, who is authorized to approve and issue amendments to this Regulation. Address recommendations to: Director, Freedom of Information and Security Review, Room 2C757, *1155 Defense Pentagon, Washington, DC 20301-1155.*

The DoD Components may obtain copies of this Regulation through their own publications channels. Approved for public release; distribution unlimited. Authorized registered users may obtain copies of this Regulation from the Defense Technical Information Center, 8725 John J. Kingman Road, Suite 0944, Ft. Belvoir, VA 22060-6218. Other Federal Agencies and the public may obtain copies from the U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. *Copies may also be obtained from the World Wide Web at the following address: http://www.defenselink.mil/pubs/foi/*

D. O. Cooke
Director
Administration and Management

WILLIAM J. DONAHUE, Lt General, USAF

Director, Communications and Information

REFERENCES

(a) **Section 552 of title 5, United States Code, "Freedom of Information Act"**

(b) **DoD Directive 5400.7, "DoD Freedom of Information Act Program," September 29, 1997**

(c) **"Personal Papers of Executive Branch Officials: A Management Guide," National Archives and Records Administration, Office of Records Administration, Washington, DC, 1992**[1]

(d) **Section 552a of title 5, United States Code, "The Privacy Act of 1974"**

(e) **DoD Directive 5100.3, "Support of the Headquarters of Unified, Specified and Subordinate Commands," November 1, 1988**

(f) **Section 551 of title 5, United States Code, "Administrative Procedures Act"**

(g) **DoD 5200.1-R, "DoD Information Security Program Regulation," January 1997, authorized by DoD Directive 5200.1, December 13, 1996**

(h) **Sections 181-188 of title 35, United States Code, "Patent Secrecy"**

(i) **Section 2162 of title 42, United States Code, "Restricted Data and Formerly Restricted Data"**

(j) **Section 798 of title 18, United States Code, "Communication Intelligence"**

(k) **Section 130 of title 10, United States Code, "Authority to Withhold from Public Disclosure Certain Technical Data"**

(l) **DoD Directive 5230.25, "Withholding of Unclassified Technical Data From Public Disclosure," November 6, 1984**

(m) **Section 1102f of title 10, United States Code, "Confidentiality of Medical Quality Assurance Records: Qualified Immunity for Participants"**

(n) **Section 128 of title 10, United States Code, "Physical Protection of Special Nuclear Material: Limitation on Dissemination of Unclassified Information"**

(o) **Section 403-3(c)(*6*) of title 50, United States Code, "Protection of Intelligence Sources and Methods"**

(p) **Section 2305(g) of title 10, United States Code, "Protection of Contractor Submitted Proposals"**

(q) **Section 423 of title 41, United States Code, "Procurement Integrity"**

(r) **Sections 2320-2321 of title 10, United States Code, "Rights in Technical Data" and "Validation of Proprietary Data Restrictions"**

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[1] Available from the Records Administration Information Center, Agency Services Division (NIA), Washington, DC 20408.

(s) **Subpart 227.71-227.72 of chapter 2 of title 48, Code of Federal Regulations, "Rights in Technical Data" and "Rights in Computer Software and Computer Software Documentation," June 28, 1995**

(t) **Section 106 of title 17, United States Code, "Copyright Act of 1976"**

(u) **DoD Directive 5154.24, "Armed Forces Institute of Pathology," October 28, 1996**

(v) **DoD 5400.11-R, "Department of Defense Privacy Program," August 1983, authorized by DoD Directive 5400.11, June 9, 1982**

(w) **Section 3500 of title 18, United States Code, "The Jencks Act"**

(x) **DoD Directive, 5230.24, "Distribution Statements on Technical Documents,"March 18, 1987**

(y) **DoD Directive 5400.4, "Provision of Information to Congress," January 30, 1978**

(z) **DoD Directive 7650.1, "General Accounting Office *(GAO) and Comptroller General* Access to Records*," September 11, 1997***

(aa) **Section 402 of title 50, United States Code, note, "National Security Act of 1959"**

(ab) **Sections 3301-3314 of title 44, United States Code, "Disposal of Records"**

(ac) **Executive Order 12600, "Predisclosure Notification Procedures for Confidential Commercial Information," June 23, 1987**

(ad) **Treasury Financial Manual, current edition**[2]

(ae) **Chapter 35 of title 44, United States Code, "Coordination of Federal Information Policy"**

(af) **Title 31 United States Code, "Money and Finance"**

(ag) **Section 2328 of title 10, United States Code, "Release of Technical Data under Freedom of Information Act: Recovery of Costs"**

(ah) **Federal Register, Volume 52, pages 10012-10020, March 27, 1987**

(ai) **DoD 7000.14-R, Volume 11A, "Department of Defense Financial Management Regulation (Reimbursable Operations, Policy and Procedures)," March 1997, authorized by DoD Instruction 7000.14, November 15, 1992**

(aj) **Section 3717 of title 31, United States Code, "Interest and Penalty on Claims"**

(ak) **Public Law 97-365, "Debt Collection Act of 1982," October 25, 1982**

(al) **DoD Manual 8320.1-M, "Data Administration Procedures," March 1994, authorized by DoD Directive 8320.1, September 26, 1991**

(am) **DoD Instruction 5400.10, "OSD Implementation of DoD Freedom of Information Act Program," *January 24, 1991***

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[2] Available from the U.S. Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, DC 20402-9328.

(an) DoD 8910.1-M, "DoD Procedures for Management of Information Requirements," *June 1998*, authorized by DoD Directive 8910.1, June 11, 1993

(ao) Part 518 of title 32, Code of Federal Regulations, "The Army Freedom of Information Act Program," March 23, 1990

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C1. CHAPTER 1

GENERAL PROVISIONS

C1.1. REFERENCES

C1.1.1. References (see pages 2 and 3, above)

C1.2. PURPOSE AND APPLICABILITY

C1.2.1. Purpose. This Regulation provides policies and procedures for the DoD implementation of the Freedom of Information Act (5 U.S.C. 552, as amended) and DoD Directive 5400.7 (references (a) and (b)), and promotes uniformity in the DoD Freedom of Information Act (FOIA) Program.

C1.2.1. (AF) This supplement implements Air Force Policy Directive (AFPD) 37-1, *Air Force Information Management* (will convert to AFPD 33-3), and applies to all Air Force activities. It provides policies and procedures for implementing the Freedom of Information Act (FOIA), Title 5 United States Code (U.S.C.) Section 552, as amended, and "For Official Use Only (FOUO)" information requirements. In the case of a conflict, this supplement takes precedence over any Air Force publication that addresses disclosure of Air Force records to the public. Commands may not change the basic procedures in this supplement. Send copies of major command (MAJCOM), field operating agency (FOA), and direct reporting unit (DRU) supplements to Headquarters Air Force Communications and Information Center (HQ AFCIC/ITC**).** Use of the term "MAJCOM" throughout this supplement includes MAJCOMs, FOAs, and DRUs. Refer recommended changes or comments to Headquarters Air Force Communications Agency (HQ AFCA/XPXP), 203 W. Losey Street, Room 1060, Scott AFB IL 62225-5222, through appropriate channels, using AF Form 847, **Recommendation for Change of Publication**, with an information copy to HQ AFCIC/ITC, 1250 Air Force Pentagon, Washington DC 20330-1250.

C1.2.1. (AFSPC) The OPR is (HQ AFSPC/SCMI) Mrs. Sharon Law. This supplement implements and **extends the guidance of DoD 5400.7-R_AFSUP1, DoD Freedom of Information Act (FOIA) Program.** It describes AFSPC's procedures for use in conjunction with the basic regulation and applies to all HQ AFSPC and subordinate units. This supplement does not apply to Air Force Reserve Command (AFRC) nor the Air National Guard (ANG). The reporting requirement in this directive is licensed under RCS: DD-DA and M (A)1365, ***Freedom of Information Act Report to Congress***.

C1.2.1.1. (Added)(AF) Summary of Revisions. This supplement supersedes Air Force Instruction (AFI) 37-131, 16 February 1995, and makes this guidance an Air Force supplement to the DoD regulation. It transfers responsibility for the Air Force FOIA Program from the Office of the

Secretary of the Air Force (SAF/AAI) to Headquarters United States Air Force (HQ USAF/SC) and HQ AFCIC/ITC; contains significant changes and additions to implement the Electronic Freedom of Information Act (EFOIA) Amendments of 1996; addresses electronic records; increases time limits to 20 working days; adds procedures for multiple tracking and expedited processing of requests; changes annual report date and content; adds MAJCOM inspectors general, MAJCOM Directors of Inquiries (IGQ), and wing commanders as initial denial authorities (IDA).

C1.2.1.1. (Added)(AFSPC) Summary of Revisions. Authorizes FOIA Managers to sign replies to requesters for total releases (para C1.5.3.7.1.3.). Deletes designating Base Records Manager as the FOIA Manager and requires Wing Commander appoint a FOIA Manager (para C1.5.3.3.2). Deletes list of positions authorized to sign total releases and authorizes FOIA Managers to sign replies to requesters when disclosure authorities approve total release of records (para C1.5.3.7.1.3). Adds requirement to coordinate requests for operational and planning records through the Operations Security Officer (para AP9.2.7.4.) Rescinds Interim Communications & Information Policy Memorandum Number 98-001, Electronic Freedom of Information Act (FOIA) Requirements, 30 Jan 98.

C1.2.2. Applicability. This Regulation applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Inspector General of the Department of Defense (IG DoD), the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as "the DoD Components"). This Regulation takes precedence over all DoD Component publications that supplement and implement the DoD FOIA Program. A list of DOD Components is at Appendix AP6.

C1.2.2. (AF) A list of Air Force MAJCOMs, FOAs, and DRUs is at Appendix 2.

C1.3. DOD PUBLIC INFORMATION

C1.3.1. Public Information.

C1.3.1.1. The public has a right to information concerning the activities of its Government. DoD policy is to conduct its activities in an open manner and provide the public with a maximum amount of accurate and timely information concerning its activities, consistent always with the legitimate public and private interests of the American people. A record requested by a member of the public who follows rules established by proper authority in the Department of Defense shall not be withheld in whole or in part unless the record is exempt from mandatory partial or total disclosure under the FOIA. As a matter of policy, DoD Components shall make discretionary disclosures of exempt records or information whenever disclosure would not foreseeably harm an interest protected by a FOIA exemption, but this policy does not create any right enforceable in court. In order that the public may have timely information concerning DoD activities, records requested through public information channels by news media representatives that would not be withheld if requested under the FOIA should be released upon request. Prompt responses to requests for information from news media representatives should be

encouraged to eliminate the need for these requesters to invoke the provisions of the FOIA and thereby assist in providing timely information to the public. Similarly, requests from other members of the public for information that would not be withheld under the FOIA should continue to be honored through appropriate means without requiring the requester to invoke the FOIA.

C1.3.1.1. (AF) Functional Requests. Air Force elements may receive requests for government information or records from the public that do not refer to the FOIA. Often these requests are sent to a public affairs office (PAO) or a specific unit. All releases of information from Air Force records, whether the requester cites the FOIA or not, must comply with the principles of the FOIA and this supplement. If the requested material contains personal privacy information that the Air Force must withhold, it is particularly important to handle that "functional" request as a request under the FOIA and coordinate it with the appropriate FOIA office and an Air Force attorney. Regardless of the nature of the functional request, if the responding element denies the release of information from Air Force records, then control the request as a FOIA and follow FOIA denial procedures for records withheld (cite the pertinent FOIA exemption and give the requester FOIA appeal rights).

C1.3.1.2. Within the OSD, the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence, as Chief Information Officer, in conjunction with the Assistant Secretary of Defense for Public Affairs, is responsible for ensuring preparation of reference material or a guide for requesting records or information from the Department of Defense, subject to the nine exemptions of the FOIA. This publication shall also include an index of all major information systems, and a description of major information and record locator systems, as defined by the Office of the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence. DoD FOIA Components shall coordinate with the appropriate office(s) to insure that this is also accomplished within their department or organization.

C1.3.1.3. DoD Components shall also prepare, in addition to normal FOIA regulations, a handbook for the use of the public in obtaining information from their organization. This handbook should be a short, simple explanation to the public of what the FOIA is designed to do, and how a member of the public can use it to access government records. Each DoD Component should explain the types of records that can be obtained through FOIA requests, why some records cannot, by law, be made available, and how the DoD Component determines whether the record can be released. The handbook should also explain how to make a FOIA request, how long the requester can expect to wait for a reply, and explain the right of appeal. The handbook should supplement other information locator systems, such as the Government Information Locator Service (GILS), and explain how a requester can obtain more information about those systems. The handbook should be available on paper and through electronic means *and contain the following additional information, complete with electronic links to the below elements; the location of reading room(s) within the Component and the types and categories of information available, the location of Component's World Wide Web page, a reference to the Component's FOIA regulation and how to obtain a copy, a reference to the Component's FOIA annual report and how to obtain a copy and the location of the Component's GILS page.* Also, the

DoD Components' Freedom of Information Act Annual Reports should refer to the handbook and how to obtain it.

C1.3.1.3. (AF) HQ AFCIC/ITC will make the Air Force handbook and guide for requesting records available on the World Wide Web (WWW) from Air ForceLINK, at *http://www.foia.af.mil/handbook.htm*.

C1.3.2. Control System. A request for records that invokes the FOIA shall enter a formal control system designed to ensure accountability and compliance with the FOIA. Any request for DoD records that either explicitly or implicitly cites the FOIA shall be processed under the provisions of this Regulation, unless otherwise required by subsection C1.5.13 below.

C1.4. DEFINITIONS

C1.4.1. Definitions. As used in this Regulation, the following terms and meanings shall be applicable:

C1.4.1. (AF) Electronic Reading Room. Rooms established on internet web sites for public access to FOIA (a)(2)(D) records.

C1.4.2. FOIA Request. A written request for DoD records *that reasonably describes the record(s) sought*, made by any person, including a member of the public (U.S. or foreign citizen/*entity*), an organization, or a business, but not including a Federal Agency or a fugitive from the law, that either explicitly or implicitly invokes the FOIA, DoD Directive 5400.7 (reference (b)), this Regulation, or DoD Component supplementing regulations or instructions. *Requesters should also indicate a willingness to pay fees associated with the processing of their request or, in the alternative, why a waiver of fees may be appropriate.* Written requests may be received by postal service or other commercial delivery means, by facsimile, or electronically. *Requests received by facsimile or electronically must have a postal mailing address included since it may not be practical to provide a substantive response electronically. The request is considered properly received, or perfected, when the above conditions have been met and the request arrives at the FOIA office of the Component in possession of the records.*

C1.4.2. (AF) This includes FOIA requests made by members of Congress either on their own behalf or on behalf of one of their constituents. Process FOIA requests from members of Congress in accordance with this Air Force supplement. Air Force-affiliated requesters, to include military and civilian employees, should not use government equipment, supplies, stationery, postage, telephones, or official mail channels to make FOIA requests.

C1.4.2.1. (Added)(AF) Simple requests can be processed quickly with limited impact on the responding units. The request clearly identifies the records with no (or few) complicating factors involved. There are few or no responsive records. Only one installation is involved and there are no outside OPRs. There are no classified or nongovernment records. No deliberative process/privileged materials are involved. The responsive records contain no (or limited) personal privacy information and do not come from a Privacy Act system of records. No time extensions are anticipated.

C1.4.2.2. (Added)(AF) Complex requests take substantial time and cause significant impact on responding units. Complications and delays are likely. Records sought are massive in volume. Multiple organizations must review/coordinate on requested records. Records are classified; originated with a nongovernment source; are part of the Air Force's decision-making process; or are privileged.

C1.4.3. Agency Record.

C1.4.3.1. The products of data compilation, such as all books, papers, maps, and photographs, machine readable materials, inclusive of those in electronic form or format, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government under Federal law in connection with the transaction of public business and in Department of Defense possession and control at the time the FOIA request is made. Care should be taken not to exclude records from being considered agency records, unless they fall within one of the categories of the subparagraph C1.4.3.2, below.

C1.4.3.2. The following are not included within the definition of the word "record":

C1.4.3.2.1. Objects or articles, such as structures, furniture, vehicles and equipment, whatever their historical value, or value as evidence.

C1.4.3.2.2. Anything that is not a tangible or documentary record, such as an individual's memory or oral communication.

C1.4.3.2.3. Personal records 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. Personal papers fall into three categories: those created before entering Government service; private materials brought into, created, or received in the office that were not created or received in the course of transacting Government business; and work-related personal papers that are not used in the transaction of Government business (see reference (c)).

C1.4.3.3. A record must exist and be in the possession and control of the Department of Defense at the time of the request to be considered subject to this Regulation and the FOIA. There is no obligation to create, compile, or obtain a record to satisfy a FOIA request. See paragraph C1.5.7.2., below on creating a record in the electronic environment.

C1.4.3.4. Hard copy or electronic records, that are subject to FOIA requests under 5 U.S.C. 552 (a)(3) (reference (a)), and that are available to the public through an established distribution system, or through the Federal Register, the National Technical Information Service, or the Internet, normally need not be processed under the provisions of the FOIA. If a request is received for such information, DoD Components shall provide the requester with guidance, inclusive of any written notice to the public, on how to obtain the information. However, if the requester insists that the request be processed under the FOIA, then the request shall be processed under the FOIA. If there is any doubt as to whether the request must be processed, contact the Directorate for Freedom of Information and Security Review.

C1.4.3.4. (AF) Refer to C1.5.9.9. for procedures when request ing records from the National Technical Information Service (NTIS) or Government Printing Office (GPO).

C1.4.4. <u>DoD Component</u>. An element of the Department of Defense, as defined in subsection C1.2.2, above, authorized to receive and act independently on FOIA requests. (See Appendix AP6.) A DoD Component has its own initial denial authority (IDA), appellate authority, and <u>legal</u> counsel.

C1.4.4.1. (Added)(AF) <u>Government Information Locator Service (GILS)</u>. GILS is an automated on-line card catalog of publicly accessible information. The Office of Management and Budget (OMB) Bulletin 95-01, 7 December 1994, and OMB Memorandum, 6 February 1998, mandates that all federal agencies create a GILS record for information available to the public. The DoD GILS resides on DefenseLINK, the official DoD home page, at "*http://www.defenselink.mil/locator/index.html*."

C1.4.5. <u>Initial Denial Authority (IDA)</u>. An official who has been granted authority by the head of a DoD component to withhold records requested under the FOIA for one or more of the nine categories of records exempt from mandatory disclosure. IDA's may also deny a fee category claim by a requester; deny a request for expedited processing due to demonstrated compelling need under paragraph C1.5.4.3, below, of this Regulation; 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 request.

C1.4.5. (AF) Only approved IDAs may deny all or parts of records. FOIA managers may: initially deny fee category claims, requests for expedited processing, and waiver or reduction of fees; review fee estimates; and sign "no records" responses. IDAs are the deputy chiefs of staff and chiefs of comparable offices or higher at HQ USAF and SAF, and MAJCOM commanders. MAJCOM

commanders may appoint two additional positions at the headquarters and also the wing commander at base level. MAJCOM inspectors general (IG) and MAJCOM Directors of Inquiries (IGQ) may act as IDAs for IG records. MAJCOM FOIA managers must notify HQ AFCIC/ITC in writing (by facsimile, e-mail, or regular mail) of IDA position titles. Send position titles only--no names. HQ AFCIC/ITC sends SAF/IGQ a copy of the correspondence designating IDA positions for IG records. When the commander changes the IDA designee position, MAJCOM FOIA managers will advise HQ AFCIC/ITC immediately. In the absence of the designated IDA, the individual filling/assuming that position acts as an IDA, however; all denial documentation must reflect the position title of the approved or designated IDA, even if in an acting capacity (for example, Acting Director of Communications and Information, Headquarters Air Combat Command).

C1.4.5. (AFSPC) HQ AFSPC Staff Judge Advocate is designated the initial denial authority for HQ AFSPC, 14AF, 20AF, and for AFSPC Space Wings/Groups tenant on another command's installation. AFSPC Wing Commanders are designated the Initial Denial Authority for the wing and its subordinate units. Per AF policy, all denial documentation must reflect the position title of the approved or designated IDA, even if in an acting capacity or on temporary "G Series" orders.

C1.4.5.1. (Added)(AF) Office of Primary Responsibility (OPR). A DoD element that either prepared, or is responsible for, records identified as responsive to a FOIA request. OPRs coordinate with the office of corollary responsibility (OCR) and FOIA managers to assist IDAs in making decisions on FOIA requests.

C1.4.5.2. (Added)(AF) OCR. A DoD element with an official interest in, and/or collateral responsibility for, the contents of records identified as responsive to a FOIA request, even though those records were either prepared by, or are the primary responsibility of, a different DoD element. OCRs coordinate with OPRs and FOIA managers to assist IDAs in making decisions on FOIA requests.

C1.4.6. Appellate Authority. The Head of the DoD Component or the Component head's designee having jurisdiction for this purpose over the record, or any of the other adverse determinations outlined in subsections C1.4.5, above, and C1.4.7, below.

C1.4.6. (AF) The SAF has designated the Deputy General Counsel, Fiscal, Ethics, and Civilian Personnel (SAF/GCA) as the FOIA appellate authority.

C1.4.7. Administrative Appeal. A request by a member of the general public, made under the FOIA, asking the appellate authority of a DoD Component to reverse a decision: to withhold all or part of a requested record; to deny a fee category claim by a requester; to deny a request for waiver or reduction of fees; to deny a request to review an initial fee estimate; to deny a request for expedited processing due to demonstrated compelling need under paragraph C1.5.4.3, below, of this Regulation; to confirm that no records were located during the initial search. ***Requesters***

also may appeal the failure to receive a response determination within the statutory time limits, and any determination that the requester believes is adverse in nature.

C1.4.8. 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 what their Government is doing. That statutory purpose, however, is not fostered by disclosure of information about private citizens accumulated in various governmental files that reveals nothing about an agency's or official's own conduct.

C1.4.9. Electronic Record. Records (including e-mail) that are created, stored, and retrievable by electronic means.

C1.4.10. Federal Agency. As defined by 5 U.S.C. 552 (f)(1) (reference (a)), a Federal agency is any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency.

C1.4.11. (Added)(AF) Reading Room. Any place where a member of the public may view FOIA records.

C1.5. POLICY

C1.5.1. Compliance with the FOIA. DoD personnel are expected to comply with the FOIA, this Regulation, and DoD FOIA policy in both letter and spirit. This strict adherence is necessary to provide uniformity in the implementation of the DoD FOIA Program and to create conditions that will promote public trust.

C1.5.2. Openness with the Public. The Department of Defense shall conduct its activities in an open manner consistent with the need for security and adherence to other requirements of law and regulation. Records not exempt from disclosure under the Act shall, upon request, be made readily accessible to the public in accordance with rules promulgated by competent authority, whether or not the Act is invoked.

C1.5.3. Avoidance of Procedural Obstacles. DoD Components shall ensure that procedural matters do not unnecessarily impede a requester from obtaining DoD records promptly. Components shall provide assistance to requesters to help them understand and comply with procedures established by this Regulation and any supplemental regulations published by the DoD Components.

C1.5.3. (AF) Responsibilities. The Director, Communications and Information (HQ USAF/SC) has overall responsibility for the Air Force FOIA Program. The Corporate Information Division (HQ AFCIC/ITC) administers the procedures necessary to implement the Air Force FOIA Program, submits reports to the Director, Freedom of Information and Security Review (DFOISR), and provides guidance and instructions to MAJCOMs. Responsibilities of other Air Force elements follow.

C1.5.3.1. (Added)(AF) SAF/GCA makes final decisions on FOIA administrative appeals.

C1.5.3.2. (Added)(AF) Installation commanders will:

C1.5.3.2.1. (Added)(AF) Comply with FOIA electronic reading room (ERR) requirements by establishing a FOIA site on their installation public web page and making frequently requested records [FOIA (a)(2)(D)] records available through links from that site, with a link to the Air Force FOIA web page at *http://www.foia.af.mil*. See paragraph C2.1.2.4.2.2.

C1.5.3.3. (Added)(AF) MAJCOM commanders implement this instruction and appoint a FOIA manager, in writing. Send the name, phone number, office symbol, and e-mail address to HQ AFCIC/ITC, 1250 Air Force Pentagon, Washington DC 20330-1250.

C1.5.3.3.1. (Added)(AFSPC) The Command Records Manager, assigned to HQ AFSPC/SCMI, is designated the Command FOIA Manager.

C1.5.3.3.2. (Added)(AFSPC) Wing Commanders appoint a FOIA manager, in writing. Send the name, phone number, office symbol, and e-mail address to HQ AFSPC/SCMI (FOIA), 150 Vandenberg St., Ste 1105, Peterson AFB CO 80914-4400.

C1.5.3.4. (Added)(AF) Air Force attorneys review FOIA responses for legal sufficiency, provide legal advice to OPRs, disclosure authorities, IDAs, and FOIA managers, and provide written legal opinions when responsive records (or portions of responsive records) are withheld. Air Force attorneys ensure factual and legal issues raised by appellants are considered by IDAs prior to sending the FOIA appeal files to the Secretary of the Air Force's designee for final action.

C1.5.3.5. (Added)(AF) Disclosure authorities and IDAs apply the policies and guidance in this instruction, along with the written recommendations provided by staff elements, when considering what decisions to make on pending FOIA actions. Where any responsive records are denied, the IDA tells the requesters the nature of records or information denied, the FOIA exemption supporting the denial, the reasons the records were not released, and gives the requester the appeal procedures. In addition, on partial releases, IDAs must ensure requesters can see the placement and general length of

redactions with the applicable exemption indicated. This procedure applies to all media, including electronic records. Providing placement and general length of redacted information is not required if doing so would harm an interest protected by a FOIA exemption. When working FOIA appeal actions for the appellate authority review:

C1.5.3.5.1 (Added)(AF) IDAs grant or recommend continued denial (in full or in part) of the requester's appeal of the earlier withholding of responsive records, or adverse determination (for example, IDAs may release some or all of the previously denied documents).

C1.5.3.5.2. (Added)(AF) IDAs reassess a request for expedited processing due to demonstrated compelling need, overturning or confirming the initial determination made by the FOIA manager.

C1.5.3.5.3. (Added)(AF) When an IDA denies any appellate action sought by a FOIA requester, the IDA, or MAJCOM FOIA manager (for no record, fee, fee estimates, or fee category appeals) will indicate in writing that the issues raised in the FOIA appeal were considered and rejected (in full or in part). Include this written statement in the file you send to the Secretary of the Air Force in the course of a FOIA appeal action. Send all appeal actions through the MAJCOM FOIA office.

C1.5.3.6. (Added)(AF) OPRs:

C1.5.3.6.1. (Added)(AF) Coordinate the release or denial of records requested under the FOIA with OCRs, FOIA offices, and with Air Force attorneys on proposed denials.

C1.5.3.6.1. (Added)(AFSPC) Staff Judge Advocate (SJA) determines if coordination is required on total releases and initial "no record" responses. FOIA Managers are encouraged to consult with the SJA staff if there is a question as to the legal sufficiency of the "no record" determination.

C1.5.3.6.2. (Added)(AF) Provide requested records. Indicate withheld parts of records annotated with FOIA exemption. Ensure requesters can see the placement and general length of redactions. This procedure applies to all media, including electronic records. Providing placement and general length of redacted information is not required if doing so would harm an interest protected by a FOIA exemption.

C1.5.3.6.3. (Added)(AF) Provide written recommendations to the disclosure authority to determine whether or not to release records, and act as declassification authority when appropriate.

C1.5.3.6.4. (Added)(AF) Make frequently requested records [FOIA (a)(2)(D)] available to the public in the FOIA ERR via the internet. As required by AFIs 33-129, *Transmission of Information Via the Internet*, and 35-205, *Air Force Security and Policy Review Program*, OPRs request clearance of these records with the PAO before posting on the WWW, and coordinate with JA and FOIA office prior to posting. The FOIA manager, in coordination with the functional OPR or the owner of the records, will determine qualifying records, after coordination with any interested OCRs.

C1.5.3.6.5. (Added)(AF) Complete the required GILS core record for each FOIA (a)(2)(D) record.

C1.5.3.6.6. (Added)(AF) Manage ERR records posted to the installation public web page by updating or removing them when no longer needed. Software for tracking number of hits may assist in this effort.

C1.5.3.7. (Added)(AF) FOIA managers:

C1.5.3.7.1. (Added)(AF) Ensure administrative correctness of all FOIA actions processed.

C1.5.3.7.1. (Added)(AFSPC) AFSPC Form 58, **Freedom of Information (FOI) Transmittal Sheet** will accompany each case file sent to OPRs.

C1.5.3.7.1.1. (Added)(AF) Control and process FOIA requests.

C1.5.3.7.1.1. (Added)(AFSPC) 21 CS/SCXIF (FOIA Office) processes FOIA requests and maintains FOIA case files for HQ USSPACECOM and HQ AFSPC.

C1.5.3.7.1.2. (Added)(AF) Obtain recommendations from the OPR for records.

C1.5.3.7.1.3. (Added)(AF) Prepare or coordinate on all proposed replies to the requester. FOIA managers may sign replies to requesters when disclosure authorities approve the total release of records. If the MAJCOM supplement directs the OPR to prepare the reply, the OPR will coordinate their reply with the FOIA office.

C1.5.3.7.1.3. (Added)(AFSPC) FOIA Managers may sign replies to requesters when disclosure authorities identified in paragraph C5.2.1.2. approve the total release of records.

C1.5.3.7.1.4. (Added)(AF) Make determinations as to whether or not the nature of requests are simple or complex where multitrack FOIA request processing queues exist.

C1.5.3.7.1.5. (Added)(AF) Approve or initially deny any requests for expedited processing.

C1.5.3.7.1.6. (Added)(AF) Provide interim responses to requesters, as required.

C1.5.3.7.1.7. (Added)(AF) Provide a reading room for inspecting and copying records.

C1.5.3.7.1.8. (Added)(AF) Provide training.

C1.5.3.7.1.9. (Added)(AF) Review publications for compliance with this supplement.

C1.5.3.7.1.10. (Added)(AF) Conduct periodic program reviews.

C1.5.3.7.1.11. (Added)(AF) Approve or deny initial fee waiver requests.

C1.5.3.7.1.12. (Added)(AF) Make the initial decision on chargeable fees.

C1.5.3.7.1.13. (Added)(AF) Collect fees.

C1.5.3.7.1.14. (Added)(AF) Send extension notices.

C1.5.3.7.1.15. (Added)(AF) Submit reports.

C1.5.3.7.1.16. (Added)(AF) Sign “no record” responses.

C1.5.3.7.1.17. (Added)(AF) Provide the requester the basis for any adverse determination (i.e., no records, fee denials, fee category determinations, etc.) in enough detail to permit the requester to make a decision whether or not to appeal the actions taken, and provide the requester with appeal procedures.

C1.5.3.7.2. (Added)(AF) On appeals, FOIA managers:

C1.5.3.7.2.1. (Added)(AF) Reassess a fee category claim by a requester, overturning or confirming the initial determination.

C1.5.3.7.2.2. (Added)(AF) Reassess a request for expedited processing due to demonstrated compelling need, overturning or confirming the initial determination.

C1.5.3.7.2.3. (Added)(AF) Reassess a request for a waiver or reduction of fees, overturning or confirming the initial determination.

C1.5.3.7.2.4. (Added)(AF) Review a fee estimate, overturning or confirming the initial determination.

C1.5.3.7.2.5. (Added)(AF) Confirm that no records were located in response to a request.

C1.5.3.7.3. (Added)(AF) The base FOIA manager acts as the FOIA focal point for the FOIA site on the installation web page.

C1.5.3.8. (Added)(AF) When any appellate action sought by a FOIA requester is denied by an IDA or FOIA manager for authorized actions, the IDA or FOIA manager will indicate, in writing, that the issues raised in the FOIA appeal were considered and rejected (in full or in part). Include this written statement in the file you send it to the Secretary of the Air Force in the course of a FOIA appeal action. Send all appeal actions through the MAJCOM FOIA office.

C1.5.3.8.1. (Added)(AFSPC) Forward appeals, to include “no record” appeals, to HQ AFSPC/SCMI (FOIA) after taking the following actions:

C1.5.3.8.1.1. (Added)(AFSPC) Obtain SJA’s written legal review.

C1.5.3.8.1.2. (Added)(AFSPC) Assemble appeal package IAW paragraph AP9.5.4.

C1.5.4. <u>Prompt Action on Requests</u>.

C1.5.4.1. Generally, when a member of the public complies with the procedures established in this Regulation and DoD Component regulations or instructions for obtaining DoD records, and after the request is received by the official designated to respond, DoD Components shall endeavor to provide a final response determination within the statutory 20 working days. If a significant number of requests, or the complexity of the requests prevent a final response determination within the statutory time period, DoD Components shall advise the requester of this fact, and explain how the request will be responded to within its multitrack processing system (see subparagraph C1.5.4.2., below). A final response determination is notification to the requester that the records are released, or will be released on a certain date, or the records are denied under the appropriate FOIA exemption, or the records cannot be provided for one or more of the other reasons in subsection C5.2.2., below. Interim responses acknowledging receipt of the request, negotiations with the requester concerning the scope of the request, the response timeframe, and fee agreements are encouraged; however, such actions do not constitute a final response determination pursuant to the FOIA. *If a request fails to meet minimum requirements as set forth in subsection C1.4.2., above, Components shall inform the requester how to perfect or correct the request. The statutory 20 working day time limit applies upon receipt of a perfected or correct FOIA request which complies with the requirements outlined in subsection C1.4.2., above.*

C1.5.4.1. (AF) Examples of letters to FOIA requesters (e.g., response determinations and interim responses) are included in Appendix 7.

C1.5.4.2. <u>Multitrack Processing.</u> When a Component has a significant number of pending requests that prevents a response determination being made within 20 working days, the requests shall be processed in a multitrack processing system, based on the date of receipt, the amount of work and time involved in processing the requests, and whether the request qualifies for expedited processing as described in paragraph C1.5.4.3., below. DoD Components may establish as many processing queues as they wish; however, as a minimum, three processing tracks shall be established, all based on a first-in, first-out concept, and rank ordered by the date of receipt of the request. One track shall be a processing queue for simple requests, one track for complex requests, and one track shall be a processing queue for expedited processing as described in paragraph C1.5.4.3, below. Determinations as to whether a request is simple or complex shall be made by each DoD Component. DoD Components shall provide a requester whose request does not qualify for the fastest queue (except for expedited processing as described in paragraph C1.5.4.3, below), an opportunity to limit in writing by hard copy, facsimile, or electronically, the scope of the request in order to qualify for the fastest queue. This multitrack processing system does not obviate components' responsibility to exercise due diligence in processing requests in the most expeditious manner possible.

C1.5.4.2. (AF) Examples of letters to FOIA requesters (e.g., letters to individuals who have had their FOIA request placed in the complex track) are included in Appendix 7.

C1.5.4.2.1. (Added)(AF) Simple requests can be processed quickly, with limited impact on the responding units. The request clearly identifies the records with no (or few) complicating factors involved. There are few or no responsive records, only one installation is involved, there are no outside OPRs, no classified or nongovernment records, no deliberative process/privileged materials are involved, records contain no (or limited) personal privacy information/did not come from Privacy Act systems of records concerning other individuals, or time extensions not anticipated.

C1.5.4.2.2. (Added)(AF) Complex requests will take substantial time, will cause significant impact on responding units. Complications and delays are likely. Records sought are massive in volume, multiple organizations must review/coordinate on records, records are classified, records originated with a nongovernment source, records were part of the Air Force's decision-making process or are privileged.

C1.5.4.3. Expedited Processing. A separate queue shall be established for requests meeting the test for expedited processing. Expedited processing shall be granted to a requester after the requester requests such and demonstrates a compelling need for the information. Notice of the determination as to whether to grant expedited processing in response to a requester's compelling need shall be provided to the requester within 10 calendar days after receipt of the request in the DoD Component's office that will determine whether to grant expedited processing. Once the DoD Component has determined to grant expedited processing, the request shall be processed as soon as practicable. Actions by DoD Components to initially deny or affirm the initial denial on appeal of a request for expedited processing, and failure to respond in a timely manner shall be subject to judicial review

C1.5.4.3. (AF) Examples of letters to individuals whose FOIA requests and/or appeals were not expedited are included in Appendix 7**.**

C1.5.4.3.1. Compelling need means that the failure to obtain the records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual.

C1.5.4.3.2. Compelling need also means that the information is urgently needed by an individual primarily engaged in disseminating information in order to inform the public concerning actual or alleged Federal Government activity. An individual primarily engaged in disseminating information means a person whose primary activity involves publishing or otherwise disseminating information to the public. Representatives of the news

media (see paragraph C6.1.5.7., below) would normally qualify as individuals primarily engaged in disseminating information. Other persons must demonstrate that their primary activity involves publishing or otherwise disseminating information to the public.

C1.5.4.3.2.1 Urgently needed means that the information has a particular value that will be lost if not disseminated quickly. Ordinarily this means a breaking news story of general public interest. However, information of historical interest only, or information sought for litigation or commercial activities would not qualify, nor would a news media publication or broadcast deadline unrelated to the news breaking nature of the information.

C1.5.4.3.3. A demonstration of compelling need by a requester shall be made by a statement certified by the requester to be true and correct to the best of their knowledge. This statement must accompany the request in order to be considered and responded to within the 10 calendar days required for decisions on expedited access.

C1.5.4.3.4. Other Reasons for Expedited Processing. Other reasons that merit expedited processing by DoD Components are an imminent loss of substantial due process rights and humanitarian need. A demonstration of imminent loss of substantial due process rights shall be made by a statement certified by the requester to be true and correct to the best of his or her knowledge. Humanitarian need means that disclosing the information will promote the welfare and interests of mankind. A demonstration of humanitarian need shall be also made by a statement certified by the requester to be true and correct to the best of his or her knowledge. Both statements mentioned above must accompany the request in order to be considered and responded to within the 10 calendar days required for decisions on expedited access. Once the decision has been made to expedite the request for either of these reasons, the request may be processed in the expedited processing queue behind those requests qualifying for compelling need.

C1.5.4.3.5. These same procedures also apply to requests for expedited processing of administrative appeals.

C1.5.5. Use of Exemptions. It is DoD policy to make records publicly available, unless the record qualifies for exemption under one or more of the nine exemptions. It is DoD policy that DoD Components shall make discretionary releases whenever possible; however, a discretionary release is normally not appropriate for records clearly exempt under exemptions 1, 3, 4, 6, 7 (C) and 7(F) (see Chapter 3, below). Exemptions 2, 5, and 7(A)(B)(D) and (E) (see Chapter 3, below) are discretionary in nature, and DoD Components are encouraged to exercise discretionary releases whenever possible. Exemptions 4, 6 and 7(C) cannot be claimed when the requester is the submitter of the information.

C1.5.5. (AF) A listing of some AFIs that provide guidance on special disclosure procedures for certain types of records is provided in Appendix 8. Refer to those instructions for specific disclosure procedures. Remember, the only reason to deny a request is a FOIA exemption.

C1.5.5.1. (Added)(AF) Refer requests from foreign government officials that do not cite the FOIA to your foreign disclosure office and notify the requester.

C1.5.5.1. (Added)(AFSPC) Foreign Disclosure Office coordination is required on requests from all foreign citizens. OPRs at wings not having a foreign disclosure office will coordinate telephonically with HQ AFSPC/XPIF.

C1.5.5.2. (Added)(AF) If you have a non-US Government record, determine if you need to consult with the record's originator before releasing it (see paragraphs C1.5.9, C3.2.1.4 Number 4, C5.1.5.1, C5.1.5.2, and C5.2.8). This includes records created by foreign governments and organizations such as North Atlantic Treaty Organization (NATO) and North American Aerospace Defense (NORAD). You may need to coordinate release of foreign government records with either the US Department of State or with the specific foreign embassy, directly through the MAJCOM FOIA office. Coordinate release or denial of letters of offer and acceptance (LOA) with SAF/IA through 11 CS/SCSR (FOIA), 1000 Air Force Pentagon, Washington DC 20330-1000.

C1.5.6. Public Domain. Nonexempt records released under the authority of this Regulation are considered to be in the public domain. Such records may also be made available in Components' reading rooms in paper form, as well as electronically, to facilitate public access. Discretionary releases to FOIA requesters constitute a waiver of the FOIA exemption that may otherwise apply. Disclosure to a properly constituted advisory committee, to Congress, or to other Federal Agencies does not waive the exemption. (See subsection C5.1.4., below.) Exempt records disclosed without authorization by the appropriate DoD official do not lose their exempt status. Also, while authority may exist to disclose records to individuals in their official capacity, the provisions of this Regulation apply if the same individual seeks the records in a private or personal capacity.

C1.5.7. Creating a Record

C1.5.7.1. A record must exist and be in the possession and control of the Department of Defense at the time of the search to be considered subject to this Regulation and the FOIA. There is no obligation to create, compile, or obtain a record to satisfy a FOIA request. A DoD Component, however, may compile a new record when so doing would result in a more useful response to the requester, or be less burdensome to the agency than providing existing records, and the requester does not object. Cost of creating or compiling such a record may not be charged to the requester unless the fee for creating the record is equal to or less than the fee

which would be charged for providing the existing record. Fee assessments shall be in accordance with Chapter 6.

C1.5.7.2. About electronic data, the issue of whether records are actually created or merely extracted from an existing database is not always readily apparent. Consequently, when responding to FOIA requests for electronic data where creation of a record, programming, or particular format are questionable, Components should apply a standard of reasonableness. In other words, if the capability exists to respond to the request, and the effort would be a business as usual approach, then the request should be processed. However, the request need not be processed where the capability to respond does not exist without a significant expenditure of resources, thus not being a normal business as usual approach. As used in this sense, a significant expenditure of resources in both time and manpower, that would cause a significant interference with the operation of the Components' automated information system would not be a business as usual approach.

C1.5.8. Description of Requested Record

C1.5.8.1. Identification of the record desired is the responsibility of the requester. The requester must provide a description of the desired record, that enables the Government to locate the record with a reasonable amount of effort. In order to assist DoD Components in conducting more timely searches, requesters should endeavor to provide as much identifying information as possible. When a DoD Component receives a request that does not reasonably describe the requested record, it shall notify the requester of the defect in writing. The requester should be asked to provide the type of information outlined below in paragraph C1.5.8.2, below, of this Regulation. DoD Components are not obligated to act on the request until the requester responds to the specificity letter. When practicable, DoD Components shall offer assistance to the requester in identifying the records sought and in reformulating the request to reduce the burden on the agency in complying with the Act.

C1.5.8.2. The following guidelines are provided to deal with generalized requests and are based on the principle of reasonable effort: (Descriptive information about a record may be divided into two broad categories.)

C1.5.8.2.1. Category I is file-related and includes information such as type of record (for example, memorandum), title, index citation, subject area, date the record was created, and originator.

C1.5.8.2.2. Category II is event-related and includes the circumstances that resulted in the record being created or the date and circumstances surrounding the event the record covers.

C1.5.8.3. Generally, a record is not reasonably described unless the description contains sufficient Category I information to permit the conduct of an organized, non random search based on the DoD Component's filing arrangements and existing retrieval systems, or unless the record contains sufficient Category II information to permit inference of the Category I elements needed to conduct such a search.

C1.5.8.4. The following guidelines deal with requests for personal records: Ordinarily, when personal identifiers are provided only in connection with a request for records concerning the requester, only records in a Privacy Act system of records that can be retrieved by personal identifiers need be searched. However, if a DoD Component has reason to believe that records on the requester may exist in a record system other than a Privacy Act system, the DoD Component shall search that system under the provisions of the FOIA. In either case, DoD Components may request a reasonable description of the records desired before searching for such records under the provisions of the FOIA and the Privacy Act (reference (d)). If the record is required to be released under the FOIA, reference (d) does not bar its disclosure. See subsection C1.5.13, below, for the relationship between the FOIA and the Privacy Act.

C1.5.8.5. The previous guidelines notwithstanding, the decision of the DoD Component concerning reasonableness of description must be based on knowledge of its files. If the description enables DoD Component personnel to locate the record with reasonable effort, the description is adequate. The fact that a FOIA request is broad or burdensome in its magnitude does not, in and of itself, entitle a DoD Component to deny the request on the ground that it does not reasonably describe the records sought. The key factor is the ability of the DoD Component's staff to reasonably ascertain and locate which records are being requested.

C1.5.8.5. (AF) Air Force elements must make reasonable efforts to find the records described in FOIA requests. Reasonable efforts means searching all activities and locations most likely to have the records, and includes staged or retired records, as well as complete and thorough searches of relevant electronic records, such as databases, word processing, and electronic mail files.

C1.5.9. <u>Referrals</u>

C1.5.9.1. The DoD FOIA referral policy is based upon the concept of the originator of a record making a release determination on its information. If a DoD Component receives a request for records originated by another DoD Component, it *should* contact the DoD Component to determine if it also received the request, and if not, obtain concurrence from the other DoD Component to refer the request. In either situation, the requester shall be advised of the action taken, unless exempt information would be revealed. While referrals to originators of information result in obtaining the best possible decision on release of the information, the policy does not relieve DoD Components from the responsibility of making a release decision on a record should the requester object to referral of the request and the record. Should this situation occur, DoD Components *should* coordinate with the originator of the information prior to making a

release determination. A request received by a DoD Component having no records responsive to a request shall be referred routinely to another DoD Component, if the other DoD Component has reason to believe it has the requested record. Prior to notifying a requester of a referral to another DoD Component, the DoD Component receiving the initial request shall consult with the other DoD Component to determine if that DoD Component's association with the material is exempt. If the association is exempt, the DoD Component receiving the initial request will protect the association and any exempt information without revealing the identity of the protected DoD Component. The protected DoD Component shall be responsible for submitting the justifications required in any litigation. Any DoD Component receiving a request that has been misaddressed shall refer the request to the proper address and advise the requester. DoD Components making referrals of requests or records shall include with the referral, a point of contact by name, a telephone number, and an e-mail address.

C1.5.9.2. A DoD Component shall refer for response directly to the requester, a FOIA request for a record that it holds to another DoD Component or agency outside the DoD, if the record originated in the other DoD Component or outside agency. Whenever a record or a portion of a record is referred to another DoD Component or to a Government Agency outside of the DoD for a release determination and direct response, the requester shall be informed of the referral, unless it has been determined that notification would reveal exempt information. Referred records shall only be identified to the extent consistent with security requirements.

C1.5.9.3. A DoD Component may refer a request for a record that it originated to another DoD Component or agency when the other DoD Component or agency has a valid interest in the record, or the record was created for the use of the other DoD Component or agency. In such situations, provide the record and a release recommendation on the record with the referral action. *Ensure you include a point of contact with the telephone number.* An example of such a situation is a request for audit reports prepared by the Defense Contract Audit Agency. These advisory reports are prepared for the use of contracting officers and their release to the audited contractor shall be at the discretion of the contracting officer. A FOIA request shall be referred to the appropriate DoD Component and the requester shall be notified of the referral, unless exempt information would be revealed. Another example is a record originated by a DoD Component or agency that involves foreign relations, and could affect a DoD Component or organization in a host foreign country. Such a request and any responsive records may be referred to the affected DoD Component or organization for consultation prior to a final release determination within the Department of Defense. See also subsection C5.1.5., below, of this Regulation.

C1.5.9.4. Within the Department of Defense, a DoD Component shall ordinarily refer a FOIA request and a copy of the record it holds, but that was originated by another DoD Component or that contains substantial information obtained from another DoD Component, to that Component for direct response, after direct coordination and obtaining concurrence from the Component. The requester then shall be notified of such referral. DoD Components shall not, in any case, release or deny such records without prior consultation with the other DoD Component, except as provided in subsection 5-104, below.

C1.5.9.4. (AF) Send all referrals through the FOIA office. The receiving FOIA office must agree to accept the referral before transfer. The FOIA office will provide the name, phone number, mailing address, and e-mail address of both the FOIA office point of contact and the record OPR point of contact in their referral letter. Include the requested record. If the requested records are massive, then provide a description of them. Referrals to, or consultations with, DFOISR are accomplished from the MAJCOM level. Appendix 7 has an example of a referral memo.

C1.5.9.5. DoD Components that receive referred requests shall answer them in accordance with the time limits established by the FOIA, this Regulation, and their multitrack processing queues, based upon the date of initial receipt of the request at the referring component or agency.

C1.5.9.6. Agencies outside the Department of Defense that are subject to the FOIA.

C1.5.9.6.1. A DoD Component may refer a FOIA request for any record that originated in an agency outside the Department of Defense or that is based on information obtained from an outside agency to the agency for direct response to the requester after coordination with the outside agency, if that agency is subject to FOIA. Otherwise, the DoD Component must respond to the request.

C1.5.9.6.2. A DoD Component shall refer to the agency that provided the record any FOIA request for investigative, intelligence, or any other type of records that are on loan to the Department of Defense for a specific purpose, if the records are restricted from further release and so marked. However, if for investigative or intelligence purposes, the outside agency desires anonymity, a DoD Component may only respond directly to the requester after coordination with the outside agency.

C1.5.9.7. DoD Components that receive requests for records of the National Security Council (NSC), the White House, or the White House Military Office (WHMO) shall process the requests. DoD records in which the NSC or White House has a concurrent reviewing interest, and NSC, White House, or WHMO records discovered in DoD Components' files shall be forwarded to the Directorate for Freedom of Information and Security Review (DFOISR). The DFOISR shall coordinate with the NSC, White House, or WHMO and return the records to the originating agency after coordination.

C1.5.9.8. To the extent referrals are consistent with the policies expressed by this subsection, referrals between offices of the same DoD Component are authorized.

C1.5.9.9. On occasion, the Department of Defense receives FOIA requests for General Accounting Office (GAO) records containing DoD information. Even though the GAO is outside the Executive Branch, and not subject to the FOIA, all FOIA requests for GAO documents containing DoD information received either from the public, or on referral from the GAO, shall be processed under the provisions of the FOIA.

C1.5.9.9. (AF) In some cases, requested records are available from the GPO and NTIS, 5285 Port Royal Road, Springfield VA 22161. These organizations offer certain records for sale to the public. Current standard releasable Air Force publications are available electronically on the WWW. For requesters without electronic access, NTIS has paper copies for sale. Give requesters the web address or NTIS address when appropriate. However, if the requester prefers to pursue the FOIA process, consult with HQ AFCIC/ITC through the MAJCOM. Refer FOIA requests for Air Force publications that are classified, FOUO, rescinded, or superseded to the OPR through the appropriate FOIA office.

C1.5.10. <u>Authentication</u>. Records provided under this Regulation shall be authenticated with an appropriate seal, whenever necessary, to fulfill an official Government or other legal function. This service, however, is in addition to that required under the FOIA and is not included in the FOIA fee schedule. DoD Components may charge for the service at a rate of $5.20 for each authentication.

C1.5.11. <u>Combatant Commands</u>

C1.5.11.1. The Combatant Commands are placed under the jurisdiction of the OSD, instead of the administering Military Department or the Chairman of the Joint Chiefs of Staff, only for the purpose of administering the DoD FOIA Program. This policy represents an exception to the policies directed in DoD Directive 5100.3 (reference (e)); it authorizes and requires the Combatant Commands to process FOIA requests in accordance with DoD Directive 5400.7 (reference (b)) and this Regulation. The Combatant Commands shall forward directly to the Director, Freedom of Information and Security Review all correspondence associated with the appeal of an initial denial for records under the provisions of the FOIA. Procedures to effect this administrative requirement are outlined in Appendix AP1.

C1.5.11.2. Combatant Commands shall maintain an electronic reading room for FOIA-processed 5 U.S.C. 552(a)(2)(D) (reference (a)) records in accordance with Chapter 2, this Regulation. Records qualifying for this means of public access also shall be maintained in hard copy for public access at Combatant Commands' respective locations.

C1.5.12. <u>Records Management</u>. FOIA records shall be maintained and disposed of in accordance with the National Archives and Records Administration General Records Schedule, and DoD Component records schedules.

C1.5.12. (AF) Keep records that were fully released for 2 years and denied records for 6 years. Include in the 6-year record file copies of records or parts of records that were released in response to the same request. Refer to Air Force Manual (AFMAN) 37-139, *Records Disposition Schedule* (converting to AFMAN 33-339). The functional OPR or FOIA office may keep the records released or denied. The FOIA office keeps the FOIA case file for each request. The FOIA case file consists of: the initial request; tasking to OPRs; OPR's reply; memoranda for record (MFR) of phone calls or other actions related to the FOIA request; DD Forms 2086, **Record of Freedom of Information (FOI) Processing Cost**, or 2086-1, **Record of Freedom of Information (FOI) Processing Cost for Technical Data**; final response; and any of the following, if applicable: extension letter; legal opinions; submitter notification letters and replies; the appeal and required attachments (except for the released or denied records if maintained by the OPR); and all other correspondence to and from the requester.

C1.5.12. (AFSPC) OPR must provide a letter to the FOIA Manager letter agreeing to maintain records recommended for partial or total denial for the required retention period IAW AFMAN 37-139, Table 37-19.

C1.5.13. <u>Relationship Between the FOIA and the Privacy Act (PA)</u>. Not all requesters are knowledgeable of the appropriate statutory authority to cite when requesting records, *nor are all of them aware of appeal procedures*. In some instances, they may cite neither Act, but will imply one or both Acts. For these reasons, the *below* guidelines are provided to ensure that requesters receive the greatest amount of access rights under both Acts. *See also paragraph C5.3., below, regarding appeal rights.*

C1.5.13.1. If the record is required to be released under the FOIA, the Privacy Act does not bar its disclosure. Unlike the FOIA, the Privacy Act applies only to U.S. citizens and aliens admitted for permanent residence.

C1.5.13.2. Requesters who seek records about themselves contained in a Privacy Act system of records and who cite or imply only the Privacy Act, will have their requests processed under the provisions of both the Privacy Act and the FOIA. If the Privacy Act system of records is exempt from the provisions of 5 U.S.C. 552a(d)(1) (reference (d)) *and if the records, or any portion thereof, are exempt under the FOIA,* the requester shall be so advised with the appropriate Privacy Act *and FOIA* exemption. *Appeals shall be processed under both Acts.*

C1.5.13.3. Requesters who seek records about themselves that are not contained in a Privacy Act system of records and who cite or imply the Privacy Act will have their requests processed under the provisions of the FOIA, since the Privacy Act does not apply to these records. *Appeals shall be processed under the FOIA.*

C1.5.13.4. Requesters who seek records about themselves that are contained in a Privacy Act system of records and who cite or imply the FOIA or both Acts will have their

requests processed under the provisions of both the Privacy Act and the FOIA. If the Privacy Act system of records is exempt from the provisions of 5 U.S.C. 552a(d)(1) (reference (d)) *and if the records, or any portion thereof, are exempt under the FOIA*, the requester shall be so advised with the appropriate Privacy Act *and FOIA* exemption. *Appeals shall be processed under both Acts.*

C1.5.13.5. Requesters who seek access to agency records that are not part of a Privacy Act system of records, and who cite or imply the Privacy Act and FOIA, will have their requests processed under the FOIA since the Privacy Act does not apply to these records. *Appeals shall be processed under the FOIA.*

C1.5.13.6. Requesters who seek access to agency records and who cite or imply the FOIA will have their requests *and appeals* processed under the FOIA.

C1.5.13.7. Requesters shall be advised in *the* final response *letter* which Act*(s) was (were)* used, *inclusive of appeal rights as outlined above.*

C1.5.14. <u>Non-Responsive Information in Responsive Records</u>. DoD Components shall interpret FOIA requests liberally when determining which records are responsive to the requests, and may release non-responsive information. However, should DoD Components desire to withhold non-responsive information, the following steps shall be accomplished:

C1.5.14.1. Consult with the requester, and ask if the requester views the information as responsive, and if not, seek the requester's concurrence to deletion of non-responsive information without a FOIA exemption. Reflect this concurrence in the response letter.

C1.5.14.2. If the responsive record is <u>unclassified</u>, and the requester does not agree to deletion of non-responsive information without a FOIA exemption, release all non-responsive and responsive information which is not exempt. For non-responsive information that is exempt, notify the requester that even if the information were determined responsive, it would likely be exempt under (state appropriate exemption (s)). Advise the requester of the right to request this information under a separate FOIA request. The separate request shall be placed in the same location within the processing queue as the original request.

C1.5.14.3. If the responsive record is <u>classified</u>, and the requester does not agree to deletion of non-responsive information without a FOIA exemption<u>, release all unclassified</u> responsive and non-responsive information which is not exempt. If the non-responsive information is exempt, follow the procedures in subparagraph C1.5.14.2, above. The classified, non-responsive information need not be reviewed for declassification at this point. Advise the requester that even if the classified information were determined responsive, it would likely be exempt under 5 U.S.C. 552 (b)(1) (reference (a)), and other exemptions if appropriate. Advise the

requester of the right to request this information under a separate FOIA request. The separate request shall be placed in the same location within the processing queue as the original request.

C1.5.15. <u>Honoring Form or Format Requests</u>. DoD Components shall provide the record in any form or format requested by the requester if the record is readily reproducible in that form or format. DoD Components shall make reasonable efforts to maintain their records in forms or formats that are reproducible. In responding to requests for records, DoD Components shall make reasonable efforts to search for records in electronic form or format, except when such efforts would significantly interfere with the operation of the DoD Components' automated information system. Such determinations shall be made on a case by case basis. See also paragraph C1.5.7.2, above.

C2. CHAPTER 2

FOIA READING ROOMS

C2.1. REQUIREMENTS

C2.1.1. Reading Room

C2.1.1.1. Each DoD Component shall provide an appropriate facility or facilities where the public may inspect and copy or have copied the records described in subsections C2.1.2 and C2.2.1, below. In addition to the records described in subsections C2.1.2 and C2.2.1, below, DoD Components may elect to place other records in their reading room, and also make them electronically available to the public. DoD Components may share reading room facilities if the public is not unduly inconvenienced, and also may establish decentralized reading rooms. When appropriate, the cost of copying may be imposed on the person requesting the material in accordance with the provisions of Chapter 6 of this Regulation.

C2.1.1.1. (AF) Each FOIA office will arrange for a reading room where the public may inspect releasable records. You do not need to collocate the reading room with the FOIA office. The FOIA does not require creation of a reading room dedicated exclusively to this purpose. A "reading room" is any location where a requester may review records. For (a)(3) records, if requesters meet the criteria for search and review costs, they must be paid before inspecting records. Assess reproduction costs at the time of inspection, if appropriate.

C2.1.2. Record Availability. The FOIA requires that records described in 5 U.S.C. 552(a)(2)(A), (B), (C), and (D) (reference (a)) created on or after November 1, 1996, shall be made available electronically by November 1, 1997, as well as in hard copy in the FOIA reading room for inspection and copying, unless such records are published and copies are offered for sale. Personal privacy information, that if disclosed to a third party requester, would result in an invasion of the first party's personal privacy, and contractor submitted information, that if disclosed to a competing contractor, would result in competitive harm to the submitting contractor shall be deleted from all 5 U.S.C. 552(a)(2) (reference (a)) records made available to the general public. In every case, justification for the deletion must be fully explained in writing, and the extent of such deletion shall be indicated on the record which is made publicly available, unless such indication would harm an interest protected by an exemption under which the deletion was made. If technically feasible, the extent of the deletion in electronic records or any other form of record shall be indicated at the place in the record where the deletion was made. However, a DoD Component may publish in the Federal Register a description of the basis upon which it will delete identifying details of particular types of records to avoid clearly unwarranted invasions of privacy, or competitive harm to business submitters. In appropriate cases, the DoD Component may refer to this description rather than write a separate justification for each deletion. 5 U.S.C. 552(a)(2)(A), (B), (C), and (D) records are:

C2.1.2.1. (a)(2)(A) records. Final opinions, including concurring and dissenting opinions, and orders made in the adjudication of cases, as defined in 5 U.S.C. 551 (reference (f)), that may be cited, used, or relied upon as precedents in future adjudications.

C2.1.2.2. (a)(2)(B) records. Statements of policy and interpretations that have been adopted by the agency and are not published in the Federal Register.

C2.1.2.3. (a)(2)(C) records. Administrative staff manuals and instructions, or portions thereof, that establish DoD policy or interpretations of policy that affect a member of the public. This provision does not apply to instructions for employees on tactics and techniques to be used in performing their duties, or to instructions relating only to the internal management of the DoD Component. Examples of manuals and instructions not normally made available are:

C2.1.2.3.1. Those issued for audit, investigation, and inspection purposes, or those that prescribe operational tactics, standards of performance, or criteria for defense, prosecution, or settlement of cases.

C2.1.2.3.2. Operations and maintenance manuals and technical information concerning munitions, equipment, systems, and intelligence activities.

C2.1.2.4. (a)(2)(D) records. Those 5 U.S.C. 552 (a)(3) (reference (a)) records, which because of the nature of the subject matter, have become or are likely to become the subject of subsequent requests for substantially the same records. These records are referred to as FOIA-processed (a)(2) records.

C2.1.2.4.1. DoD Components shall decide on a case by case basis whether records fall into this category, based on the following factors:

C2.1.2.4.1.1. Previous experience of the DoD Component with similar records.

C2.1.2.4.1.2. Particular circumstances of the records involved, including their nature and the type of information contained in them.

C2.1.2.4.1.3. The identity and number of requesters and whether there is widespread press, historic, or commercial interest in the records.

C2.1.2.4.2. This provision is intended for situations where public access in a timely manner is important, and it is not intended to apply where there may be a limited number of requests over a short period of time from a few requesters. DoD Components may remove the records from this access medium when the appropriate officials determine that access is no longer necessary.

C2.1.2.4.2. (AF) HQ AFCIC/ITC will make the traditional (a)(2) materials [Title 5 U.S.C. 552(a)(2)(A), (B), and (C)] available to the public. Each Air Force activity must make Title 5 U.S.C. 552(a)(2)(D) records ("FOIA-processed (a)(2)(D) records"—records which they determine will, or have become, the subject of frequent or subsequent requests) available to the public in a reading room in hard copy and electronically by posting it to their appropriate web site. There is no requirement to make all FOIA-released records available electronically. The FOIA manager, in coordination with the functional OPR, or the owner of the records, determines qualifying records, after coordination with any interested OCRs. As required by AFIs 33-129 and 35-205, OPRs request clearance of these records with the PAO before posting on the WWW.

C2.1.2.4.2.1. (Added)(AF) Normally, if the FOIA office or OPR receives, or anticipates receiving, five or more requests for the same record in a quarter, they will consider it a frequently requested record (FOIA-processed (a)(2)(D) record) and make it publicly available in hard copy and electronically as outlined in paragraph C2.1.2. OPRs may elect to make other records publicly available if they receive, or expect to receive, less than five requests a quarter. The purpose is to make records available in an ERR to potential future FOIA requesters instead of waiting to receive a FOIA request, and reduce the number of multiple FOIA requests for the same records requiring separate responses. In making these determinations, recognize there are some situations in which a certain type of record becomes the subject of simultaneous FOIA requests from all interested parties and then ceases to be of interest. Activities may typically receive a "flurry" of FOIA requests for contract records immediately after a contract is awarded, but do not receive any subsequent requests for such bulky records after that point. In some cases activities may decide that placing records in the ERR would not serve the statutory purpose of "diverting some potential FOIA requests for previously released records." The following types of records should be considered for inclusion in the ERR (excluding individuals assigned to overseas, sensitive, and routinely deployable units): organizational charts and limited staff directories; lists of personnel reassigned with gaining base; MAJCOM FOIA supplements; lists of International Merchant Purchase Authority Card (IMPAC) card holders. Do not post lists of e-mail addresses.

C2.1.2.4.2.2. (Added)(AF) GILS. Each activity that posts FOIA-processed (a)(2)(D) records (records which they determine will, or have become, the subject of frequent or subsequent requests) must create a GILS record for each FOIA-processed (a)(2)(D) record and post it to DefenseLINK. The OPR prepares the GILS record. You can complete and submit a GILS record on-line using a web browser. Instructions for completing the GILS record, and an on-line form are at *http://www.defenselink.mil/locator/index.html*. Follow the steps listed on the web page. The GILS site on DefenseLINK will serve as the central index of Air Force FOIA (a)(2)(D) records.

C2.1.2.4.2.3. (Added)(AF) In addition, installations will post a list, or index, of locally produced FOIA-processed (a)(2)(D) records on their web page at their FOIA site. Each listing will point or link to the particular record. In addition, MAJCOMs may choose to post their own index of MAJCOM specific FOIA-processed (a)(2)(D) records to their appropriate web site. Installation web pages will include the following phrase (or similar words) on their FOIA site if they do not have any frequently requested FOIA records: "There are no frequently requested FOIA records to post at this time." Include the following statement, or a similar one, on the installation web page with the records: "Some records are released to the public under the FOIA, and may therefore reflect deletion of some information in accordance with the FOIA's nine statutory exemptions. A consolidated list of such records is on DefenseLINK." Link the word "DefenseLINK" to *www.defenselink.mil/locator/fpr_index.html*. Qualifying releasable records with exempt information redacted must show on the record the amount of information withheld and the exemption reason (for example, (b)(6)). Activities with such records should provide the public an index and explanation of the FOIA exemptions. All installation FOIA pages will include a link to the Air Force page.

C2.1.2.4.2.4. (Added)(AF) FOIA web pages should be clearly accessed from the main installation page, either by a direct link to "FOIA" or "Freedom of Information Act" from the main page, or found under a logical heading such as "Library" or "Sites."

C2.1.2.4.3. Should a requester submit a FOIA request for FOIA-processed (a)(2) records, and insist that the request be processed, DoD Components shall process the FOIA request. However, DoD Components have no obligation to process a FOIA request for 5 U.S.C. 552(a)(2)(A), (B), and (C) (reference (a)) records because these records are required to be made public and not FOIA-processed under paragraph (a)(3) of the FOIA.

C2.2. <u>INDEXES</u>

C2.2.1. <u>"(a)(2)" Materials</u>

C2.2.1.1. Each DoD Component shall maintain in each facility prescribed in paragraph C2.1.1 above, an index of materials described in paragraph C2.1.2., above, that are issued, adopted, or promulgated, after July 4, 1967. No "(a) (2)" materials issued, promulgated, or adopted after July 4, 1967, that are not indexed and either made available or published may be relied upon, used or cited as precedent against any individual unless such individual has actual and-timely notice of the contents of such materials. Such materials issued, promulgated, or adopted before July 4, 1967, need not be indexed, but must be made available upon request if not exempted under this Regulation.

C2.2.1.1. (AF) The GILS records on DefenseLINK will serve as the index.

C2.2.1.2. Each DoD Component shall promptly publish quarterly or more frequently, and distribute, by sale or otherwise, copies of each index of "(a) (2)" materials or supplements thereto unless it publishes in the Federal Register an order containing a determination that publication is unnecessary and impracticable. A copy of each index or supplement not published shall be provided to a requester at a cost not to exceed the direct cost of duplication as set forth in Chapter 6 of this Regulation.

C2.2.1.3. Each index of "(a) (2)" materials or supplement thereto shall be arranged topical or by descriptive words rather than by case name or numbering system so that members of the public can readily locate material. Case name and numbering arrangements, however, may also be included for DoD Component convenience.

C2.2.1.4. A general index of FOIA-processed (a)(2) records referred to in paragraph C2.1.2.4., above, shall be made available to the public, both in hard copy and electronically by December 31, 1999.

C2.2.2. <u>Other Materials</u>

C2.2.2.1. Any available index of DoD Component material published in the Federal Register, such as material required to be published by Section 552(a)(1) of the FOIA, shall be made available in DoD Component FOIA reading rooms, and electronically to the public.

C2.2.2.2. Although not required to be made available in response to FOIA requests or made available in FOIA Reading Rooms, "(a)(1)" materials shall, when feasible, be made available to the public in FOIA reading rooms for inspection and copying, and by electronic means. Examples of "(a)(1)" materials 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, instruction as to the scope and contents of papers, reports, or examinations, and any amendment, revision, or report of the aforementioned.

C2.2.2.2. (AF) HQ AFCIC/ITC makes the appropriate (a)(1) materials available for the Air Force.

C3. CHAPTER 3

EXEMPTIONS

C3.1. GENERAL PROVISIONS

C3.1.1. General. Records that meet the exemption criteria of the FOIA may be withheld from public disclosure and need not be published in the Federal Register, made available in a library reading room, or provided in response to a FOIA request.

C3.2. EXEMPTIONS

C3.2.1. FOIA Exemptions. The following types of records may be withheld in whole or in part from public disclosure under the FOIA, unless otherwise prescribed by law: A discretionary release of a record (see also subsection C1.5.5., above) to one requester shall prevent the withholding of the same record under a FOIA exemption if the record is subsequently requested by someone else. However, a FOIA exemption may be invoked to withhold information that is similar or related that has been the subject of a discretionary release. In applying exemptions, the identity of the requester and the purpose for which the record is sought are irrelevant with the exception that an exemption may not be invoked where the particular interest to be protected is the requester's interest. *However, if the subject of the record is the requester for the record and the record is contained in a Privacy Act system of records, it may only be denied to the requester if withholding is both authorized by DoD 5400.11-R (reference (v)) and by a FOIA exemption.*

C3.2.1.1. Number 1. (5 U.S.C. 552 (b)(1) (reference (a)). Those properly and currently classified in the interest of national defense or foreign policy, as specifically authorized under the criteria established by Executive Order and implemented by regulations, such as DoD 5200.1-R (reference (g)). Although material is not classified at the time of the FOIA request, a classification review may be undertaken to determine whether the information should be classified. The procedures in reference (g) apply. If the information qualifies as exemption 1 information, there is no discretion regarding its release. In addition, this exemption shall be invoked when the following situations are apparent:

C3.2.1.1.1. The fact of the existence or nonexistence of a record would itself reveal classified information. In this situation, Components shall neither confirm nor deny the existence or nonexistence of the record being requested. A "refusal to confirm or deny" response must be used 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 itself disclose national security information.

C3.2.1.1.2. Compilations of items of information that are individually unclassified may be classified if the compiled information reveals additional association or relationship that meets the standard for classification under an existing executive order for classification and DoD 5200.1-R (reference (g)), and is not otherwise revealed in the individual items of information.

C3.2.1.1.2. (AF) When a requester seeks records that are classified, or should be classified, only an initial classification authority, or a declassification authority, can make final determinations with respect to classification issues. The fact that a record is marked with a security classification is not enough to support withholding the document; make sure it is "properly and currently classified." Review the record paragraph by paragraph for releasable information. Review declassified and unclassified parts before release to see if they are exempt by other exemptions. 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. If the requested records are "properly and currently classified," and the Air Force withholds from release under FOIA exemption (b)(1), and the requester appeals the withholding, include a written statement from an initial classification authority or declassification authority certifying the data was properly classified originally and that it remains properly classified per Executive Order. Examples of initial classification and declassification authority statements are included in Appendix 7. Guidance on document declassification reviews is in AFI 31-401, *Managing the Information Security Program*, and DoD 5200.1-R, *Information Security Program*, January 1997.

C3.2.1.2. Number 2. (5 U.S.C. 552 (b)(2) (reference (a)). Those related solely to the internal personnel rules and practices of the Department of Defense or any of its Components. This exemption is entirely discretionary. This exemption has two profiles, high (b)(2) and low (b)(2). Paragraph C3.2.1.2.2., below, contains a brief discussion on the low (b)(2) profile; however, that discussion is for information purposes only. When only a minimum Government interest would be affected (administrative burden), there is a great potential for discretionary disclosure of the information. Consequently, DoD Components shall not invoke the low (b)(2) profile.

C3.2.1.2.1. Records qualifying under high (b)(2) are those containing or constituting statutes, rules, regulations, orders, manuals, directives, instructions, and security classification guides, the release of which would allow circumvention of these records thereby substantially hindering the effective performance of a significant function of the Department of Defense. Examples include:

C3.2.1.2.1.1. Those operating rules, guidelines, and manuals for DoD investigators, inspectors, auditors, or examiners that must remain privileged in order for the DoD Component to fulfill a legal requirement.

C3.2.1.2.1.2. Personnel and other administrative matters, such as examination questions and answers used in training courses or in the determination of the qualifications of candidates for employment, entrance on duty, advancement, or promotion.

C3.2.1.2.1.3. Computer software, the release of which would allow circumvention of a statute or DoD rules, regulations, orders, manuals, directives, or instructions. In this situation, the use of the software must be closely examined to ensure a circumvention possibility exists.

C3.2.1.2.2. Records qualifying under the low (b)(2) profile are those that are trivial and housekeeping in nature for which there is no legitimate public interest or benefit to be gained by release, and it would constitute an administrative burden to process the request in order to disclose the records. Examples include rules of personnel's use of parking facilities or regulation of lunch hours, statements of policy as to sick leave, and administrative data such as file numbers, mail routing stamps, initials, data processing notations, brief references to previous communications, and other like administrative markings. DoD Components shall not invoke the low (b)(2) profile.

C3.2.1.3. <u>Number 3</u>. (5 U.S.C. 552 (b)(3) (reference (a)). Those concerning matters that a statute specifically exempts from disclosure by terms that permit <u>no discretion</u> on the issue, or in accordance with criteria established by that statute for withholding or referring to particular types of matters to be withheld. The Directorate for Freedom of Information and Security Review maintains a list of (b)(3) statutes used within the Department of Defense, and provides updated lists of these statutes to DoD Components on a periodic basis. <u>A few</u> examples of such statutes are:

C3.2.1.3. (AF) HQ AFCIC/ITC will provide the current DoD (b)(3) statutes list to the MAJCOMs.

C3.2.1.3.1. Patent Secrecy, 35 U.S.C. 181-188 (reference (h)). Any records containing information relating to inventions that are the subject of patent applications on which Patent Secrecy Orders have been issued.

C3.2.1.3.2. Restricted Data and Formerly Restricted Data, 42 U.S.C. 2162 (reference (i)).

C3.2.1.3.3. Communication Intelligence, 18 U.S.C. 798 (reference (j)).

C3.2.1.3.4. Authority to Withhold From Public Disclosure Certain Technical Data, 10 U.S.C. 130 and DoD Directive 5230.25 (references (k) and (l)).

C3.2.1.3.5. Confidentiality of Medical Quality Assurance Records: Qualified Immunity for Participants, 10 U.S.C. 1102 f (reference (m)).

C3.2.1.3.6. Physical Protection of Special Nuclear Material: Limitation on Dissemination of Unclassified Information, 10 U.S.C. 128 (reference (n)).

C3.2.1.3.7. Protection of Intelligence Sources and Methods, 50 U.S.C. 403-3(c)(*6*) (reference (o)).

C3.2.1.3.8. Protection of Contractor Submitted Proposals, 10 U.S.C. 2305(g) (reference (p)).

C3.2.1.3.9. Procurement Integrity, 41 U.S.C. 423 (reference (q)).

C3.2.1.3.9. (AFSPC) During the conduct of a procurement, rely on the procurement integrity provisions, 41 U.S.C. 423(b) as a basis for withholding proprietary and/or source selection information requested under the FOIA. Reliance on this statutory authority is also appropriate when a protest of a solicitation or award of a contract is pending. When reliance on this authority is appropriate, the submitter of the records need not be notified. The exemption under this statute is no longer applicable once the procurement has been completed, ordinarily upon the award or modification of the contract or cancellation of the procurement.

C3.2.1.4. <u>Number 4</u>. (5 U.S.C. 552 (b)(4) (reference (a)). Those containing trade secrets or commercial or financial information that a DoD Component receives from a person or organization outside the Government with the understanding that the information or record will be retained on a privileged or confidential basis in accordance with the customary handling of such records. Records within the exemption must contain trade secrets, or commercial or financial records, the disclosure of which is likely to cause substantial harm to the competitive position of the source providing the information; impair the Government's ability to obtain necessary information in the future; or impair some other legitimate Government interest. Commercial or financial information submitted on a voluntary basis, absent any exercised authority prescribing criteria for submission is protected without any requirement to show competitive harm (see paragraph C3.2.1.4.8., below). If the information qualifies as exemption 4 information, there is <u>no discretion</u> in its release. Examples include:

C3.2.1.4.1. Commercial or financial information received in confidence in connection with loans, bids, contracts, or proposals set forth in or incorporated by reference in

a contract entered into between the DoD Component and the offeror that submitted the proposal, as well as other information received in confidence or privileged, such as trade secrets, inventions, discoveries, or other proprietary data. See also C5.2.8.2., below, this Regulation. Additionally, when the provisions of 10 U.S.C. 2305(g) (reference (p)), and 41 U.S.C. 423 (reference (q)) are met, certain proprietary and source selection information may be withheld under exemption 3.

C3.2.1.4.2. Statistical data and commercial or financial information concerning contract performance, income, profits, losses, and expenditures, if offered and received in confidence from a contractor or potential contractor.

C3.2.1.4.3. Personal statements given in the course of inspections, investigations, or audits, when such statements are received in confidence from the individual and retained in confidence because they reveal trade secrets or commercial or financial information normally considered confidential or privileged.

C3.2.1.4.4. Financial data provided in confidence 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.

C3.2.1.4.5. 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.

C3.2.1.4.6. Technical or scientific data developed by a contractor or subcontractor exclusively at private expense, and technical or scientific data developed in part with Federal funds and in part at private expense, wherein the contractor or subcontractor has retained legitimate proprietary interests in such data in accordance with 10 U.S.C. 2320-2321 (reference (r)) and DoD Federal Acquisition Regulation Supplement (DFARS), Chapter 2 of 48 C.F.R., Subpart 227.71-227.72 (reference (s)). Technical data developed exclusively with Federal funds may be withheld under Exemption Number 3 if it meets the criteria of 10 U.S.C. 130 (reference (k)) and DoD Directive 5230.25 (reference (l)) (see subsection C3.2.1., Number 3 C3.2.1.3.5., above).

C3.2.1.4.7. Computer software which is copyrighted under the Copyright Act of 1976 (17 U.S.C. 106) (reference (t)), the disclosure of which would have an adverse impact on the potential market value of a copyrighted work.

C3.2.1.4.8. Proprietary information submitted strictly on a voluntary basis, absent any exercised authority prescribing criteria for submission. Examples of exercised authorities prescribing criteria for submission are statutes, Executive Orders, regulations,

invitations for bids, requests for proposals, and contracts. Submission of information under these authorities is not voluntary. (See also subsection C5.2.8.3., below.)

C3.2.1.4.8. (AF) The Air Force, in compliance with Executive Order 12600, will advise submitters of contractor-submitted records when a FOIA requester seeks the release of such records, regardless of any initial determination of whether FOIA exemption (b)(4) applies. (See paragraph C5.2.8.1, and Appendix 11.) Due to a change to Title 48 CFR, *Federal Acquisition Regulations System*, submitter notification is not required prior to release of unit prices contained in contracts awarded based upon solicitations issued after 1 January 1998. For solicitations issued before 1 January 1998, conduct a normal submitter notice. Unit prices contained in proposals provided prior to contract award are protected from release, as are all portions of unsuccessful proposals (before and after contract award) (10 USC 2305(g), Prohibition on Release of Contractor Proposals).

C3.2.1.5. Number 5. (5 U.S.C. 552 (b)(5) (reference (a)). Those containing information considered privileged in litigation, primarily under the deliberative process privilege. Except as provided in paragraphs Number 5 C3.2.1.5.2. through C3.2.1.5.5., below, internal advice, recommendations, and subjective evaluations, as contrasted with factual matters, that are reflected in deliberative records pertaining to the decision-making process of an agency, whether within or among agencies (as defined in 5 U.S.C. 552(e) (reference (a)), or within or among DoD Components. In order to meet the test of this exemption, the record must be both deliberative in nature, as well as part of a decision-making process. Merely being an internal record is insufficient basis for withholding under this exemption. Also potentially exempted are records pertaining to the attorney-client privilege and the attorney work-product privilege. This exemption is entirely discretionary.

C3.2.1.5. (AF) Attorney-client records could include, e.g., when 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 under this privilege. Unlike deliberative process privilege, both facts and opinions qualify under the attorney work product or attorney-client privilege. Attorney work product records are records an attorney prepares, or supervises the preparation of, in contemplating or preparing for administrative proceedings or litigation.

C3.2.1.5.1. Examples of the deliberative process include:

C3.2.1.5.1.1. The non factual portions of staff papers, to include after-action reports, lessons learned, and situation reports containing staff evaluations, advice, opinions, or suggestions.

C3.2.1.5.1.2. Advice, suggestions, or evaluations prepared on behalf of the Department of Defense by individual consultants or by boards, committees, councils, groups, panels, conferences, commissions, task forces, or other similar groups that are formed for the purpose of obtaining advice and recommendations.

C3.2.1.5.1.3. Those non factual portions of evaluations by DoD Component personnel of contractors and their products.

C3.2.1.5.1.4. 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 government functions.

C3.2.1.5.1.5. Trade secret or other confidential research development, or commercial information owned by the Government, where premature release is likely to affect the Government's negotiating position or other commercial interest.

C3.2.1.5.1.6. Those portions of official reports of inspection, reports of the Inspector Generals, audits, investigations, or surveys pertaining to safety, security, or the internal management, administration, or operation of one or more DoD Components, when these records have traditionally been treated by the courts as privileged against disclosure in litigation.

C3.2.1.5.1.6. (AF) Based on court decisions in FOIA litigation, which led to the release of results of personnel surveys, FOIA managers and IDAs should get advice from an Air Force attorney before withholding survey results under FOIA exemption (b)(5).

C3.2.1.5.1.7. Planning, programming, and budgetary information that is involved in the defense planning and resource allocation process.

C3.2.1.5.2. If any such intra- or inter-agency record or reasonably segregable portion of such record hypothetically would be made available routinely through the discovery process in the course of litigation with the Agency, then it should not be withheld under the FOIA. If, however, the information hypothetically would not be released at all, or would only be released in a particular case during civil discovery where a party's particularized showing of need might override a privilege, then the record may be withheld. Discovery is the formal process by which litigants obtain information from each other for use in the litigation. Consult with legal counsel to determine whether exemption 5 material would be routinely made available through the discovery process.

C3.2.1.5.3. Intra- or inter-agency memoranda or letters that are factual, or those reasonably segregable portions that are factual, are routinely made available through

discovery, and shall be made available to a requester, unless the factual material is otherwise exempt from release, inextricably intertwined with the exempt information, so fragmented as to be uninformative, or so redundant of information already available to the requester as to provide no new substantive information.

C3.2.1.5.4. A direction or order from a superior to a subordinate, though contained in an internal communication, generally cannot be withheld from a requester if it constitutes policy guidance or a decision, as distinguished from a discussion of preliminary matters or a request for information or advice that would compromise the decision-making process.

C3.2.1.5.5. An internal communication concerning a decision that subsequently has been made a matter of public record must be made available to a requester when the rationale for the decision is expressly adopted or incorporated by reference in the record containing the decision.

C3.2.1.6. Number 6. (5 U.S.C. 552 (b)(6) (reference (a)). Information in personnel and medical files, as well as similar personal information in other files, that, if disclosed to a requester, other than the person about whom the information is about, would result in a clearly unwarranted invasion of personal privacy. Release of information about an individual contained in a Privacy Act System of records that would constitute a clearly unwarranted invasion of privacy is prohibited, and could subject the releaser to civil and criminal penalties. If the information qualifies as exemption 6 information, there is no discretion in its release.

C3.2.1.6. (AF) AFI 37-132, *Air Force Privacy Act Program* (will convert to AFI 33-332) provides guidance on collecting and safeguarding social security numbers (SSN). It states: "SSNs are personal and unique to each individual. Protect them as FOUO. Do not disclose them to anyone without an official need to know". Before releasing an Air Force record to a FOIA requester, delete SSNs that belong to anyone other than the requester. In any subsequent FOIA release to a different requester of those same records, make sure SSNs are deleted. When feasible, notify Air Force employees when someone submits a FOIA request for information about them. The notification letter should include a brief description of the records requested. Also include a statement that only releasable records will be provided and we will protect personal information as required by the FOIA and Privacy laws. Personal information may not be posted at publicly accessible DoD web sites unless to do so is clearly authorized by law and implementing regulation and policy. Personal information should not be posted at nonpublicly accessible web sites unless it is mission essential and appropriate safeguards have been established. See also AFIs 33-129 and 35-205.

C3.2.1.6. (AFSPC) Use format at AP7.18. to notify an individual of a request for the records.

C3.2.1.6.1. Examples of other files containing personal information similar to that contained in personnel and medical files include:

C3.2.1.6.1.1. Those compiled to evaluate or adjudicate the suitability of candidates for civilian employment or membership in the Armed Forces, and the eligibility of individuals (civilian, military, or contractor employees) for security clearances, or for access to particularly sensitive classified information.

C3.2.1.6.1.2. Files containing reports, records, and other material pertaining to personnel matters in which administrative action, including disciplinary action, may be taken.

C3.2.1.6.2. Home addresses, ***including private e-mail addresses,*** **are normally not consent of the individuals concerned. This includes lists of home addressees and military quarters' addre name.** ***Additionally, the names and duty addresses (postal and/or e-mail) of DoD military and civilian perso that are sensitive, routinely deployable, or stationed in foreign territories can constitute a clearly unwarrante***

C3.2.1.6.2.1. <u>Privacy Interest</u>. A privacy interest may exist in personal information even though the information has been disclosed at some place and time. If personal information is not freely available from sources other than the Federal Government, a privacy interest exists in its nondisclosure. The fact that the Federal Government expended funds to prepare, index and maintain records on personal information, and the fact that a requester invokes FOIA to obtain these records indicates the information is not freely available.

C3.2.1.6.2.2. Names and duty addresses *(postal and/or e-mail)* published in telephone directories, organizational charts, rosters and similar materials for personnel assigned to units that are sensitive, routinely deployable, or stationed in foreign territories are withholdable under this exemption.

C3.2.1.6.2.2. (AF) 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 United States territories. 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 United States territories (e.g., annually or semi-annually) are not routinely deployable units. However, units alerted for deployment outside the United States or United States 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 have 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 United States territories. Sensitive units are those involved in 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.

C3.2.1.6.2.2.1. (Added)(AF) Each MAJCOM and FOA will establish a system and assign OPRs to identify United States-based units in their command qualifying for the "sensitive or routinely deployable unit" designation, under this exemption. Appropriate OPRs could include directors of operations, plans and programs, and personnel.

C3.2.1.6.2.2.2. (Added)(AF) MAJCOM FOIA managers will ensure the list of sensitive and routinely deployable units is reviewed in January and July, and will follow that review with a memo to the Air Force Personnel Center (HQ AFPC/MSIMD), 550C Street West, Suite 48, Randolph AFB TX 78150-4750, either validating the current list or providing a revised listing based on the current status of deployed units at that time. This listing is in American Standard Code for Information Interchange (ASCII) format on a 3-½" (double-sided, high density) diskette, which contains the unit's eight-position personnel accounting symbol (PAS) code, with one PAS code per line (record)(8-byte record). The MAJCOM FOIA manager will send an electronic copy of the list of nonreleaseable units to HQ AFPC/MSIMD which is included in the personnel data system. The MAJCOM and HQ AFPC FOIA offices will use it to determine releasable lists of names and duty addresses. This reporting requirement is exempt from licensing with a reports 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* (will convert to AFI 33-324).

C3.2.1.6.2.2.2. (Added)(AFSPC) AFSPC has no sensitive or routinely deployable units.

C3.2.1.6.3. This exemption shall not be used in an attempt to protect the privacy of a deceased person, but it may be used to protect the privacy of the deceased person's family if disclosure would rekindle grief, anguish, pain, embarrassment, or even disruption of peace of mind of surviving family members. In such situations, balance the surviving family members' privacy against the public's right to know to determine if disclosure is in the public interest. Additionally, the deceased's social security number should be withheld since it is used by the next of kin to receive benefits. Disclosures may be made to the immediate next of kin as defined in DoD Directive 5154.24 (reference (u)).

C3.2.1.6.4. A clearly unwarranted invasion of the privacy of third parties identified in a personnel, medical or similar record constitutes a basis for deleting those reasonably segregable portions of that record. When withholding third party personal information from the subject of the record and the record is contained in a Privacy Act system of records, consult with legal counsel.

C3.2.1.6.5. This exemption also applies when the fact of the existence or nonexistence of a responsive record would itself reveal personally private information, and the public interest in disclosure is not sufficient to outweigh the privacy interest. In this situation, DoD Components shall neither confirm nor deny the existence or nonexistence of the record being requested. This is a Glomar response, and exemption 6 must be cited in the response. Additionally, in order to insure personal privacy is not violated during referrals, DoD Components shall coordinate with other DoD Components or Federal Agencies before referring a record that is exempt under the Glomar concept.

C3.2.1.6.5.1. A "refusal to confirm or deny" response must be used consistently, not only when a record exists, but also when a record does not exist. Otherwise, the pattern of using a "no records" response when a record does not exist and a "refusal to confirm or deny" when a record does exist will itself disclose personally private information.

C3.2.1.6.5.2. Refusal to confirm or deny should not be used when (a) the person whose personal privacy is in jeopardy has provided the requester a waiver of his or her privacy rights; (b) the person initiated or directly participated in an investigation that lead to the creation of an agency record seeks access to that record; or (c) the person whose personal privacy is in jeopardy is deceased, the Agency is aware of that fact, and disclosure would not invade the privacy of the deceased's family. See paragraph Number C3.2.1.6.2.3., above.

C3.2.1.7. Number 7. (5 U.S.C. 552 (b)(7) (reference (a)). Records or information compiled for law enforcement purposes; i.e., civil, criminal, or military law, 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. With the exception of parts (C) and (F) (see subparagraph Number 7 C3.2.1.7.1.3., below) of this exemption, this exemption is discretionary. If information qualifies as exemption (7)(C) or (7)(F) (see subparagraph Number 7 C3.2.1.7.1.3., below) information, there is no discretion in its release.

C3.2.1.7. (AFSPC) Identify a specific subparagraph within the exemption when citing Exemption 7, i.e., (b)(7)(c).

C3.2.1.7.1. This exemption applies, however, only to the extent that production of such law enforcement records or information could result in the following:

C3.2.1.7.1.1. Could reasonably be expected to interfere with enforcement proceedings (5 U.S.C. 552(b)(7)(A) (reference (a)).

C3.2.1.7.1.2. Would deprive a person of the right to a fair trial or to an impartial adjudication (5 U.S.C. 552(b)(7)(B) (reference (a)).

C3.2.1.7.1.3. Could reasonably be expected to constitute an unwarranted invasion of personal privacy of a living person, including surviving family members of an individual identified in such a record (5 U.S.C. 552(b)(7)(C) (reference (a)).

C3.2.1.7.1.3. (AF) Guidance provided in paragraph C3.2.1.6.2.2. (AF) also applies to SSNs in records compiled for law enforcement purposes. Do not disclose SSNs to anyone without an official need to know.

C3.2.1.7.1.3. (AFSPC) Use Exemption b(6) in addition to b(7)(c) for withholding names from investigative records, i.e., incident reports, IG inquiries per SAF/IGQ guidance.

C3.2.1.7.1.3.1. This exemption also applies when the fact of the existence or nonexistence of a responsive record would itself reveal personally private information, and the public interest in disclosure is not sufficient to outweigh the privacy interest. In this situation, Components shall neither confirm nor deny the existence or nonexistence of the record being requested. This is a Glomar response, and exemption (7)(C) must be cited in the response. Additionally, in order to insure personal privacy is not violated during referrals, DoD Components shall coordinate with other DoD Components or Federal Agencies <u>before</u> referring a record that is exempt under the Glomar concept.

C3.2.1.7.1.3.2. A "refusal to confirm or deny" response must be used consistently, not only when a record exists, but also when a record does not exist. Otherwise, the pattern of using a "no records" response when a record does not exist and a "refusal to confirm or deny" when a record does exist will itself disclose personally private information.

C3.2.1.7.1.3.3. Refusal to confirm or deny should not be used when <u>1</u> the person whose personal privacy is in jeopardy has provided the requester with a waiver of his or her privacy rights; or <u>2</u> the person whose personal privacy is in jeopardy is deceased, and the Agency is aware of that fact.

C3.2.1.7.1.3.4. 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 (5 U.S.C. 552(b)(7)(D) (reference (a)).

C3.2.1.7.1.3.5. 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 (5 U.S.C. 552(b)(7)(E) (reference (a)).

C3.2.1.7.1.3.6. Could reasonably be expected to endanger the life or physical safety of any individual (5 U.S.C. 552(b)(7)(F) (reference (a).

C3.2.1.7.2. Some examples of exemption 7 are:

C3.2.1.7.2.1. Statements of witnesses and other material developed during the course of the investigation and all materials prepared in connection with related Government litigation or adjudicative proceedings.

C3.2.1.7.2.2. 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.

C3.2.1.7.2.3. Information obtained in confidence, expressed or implied, in the course of a criminal investigation by a criminal law enforcement agency or office within a DoD Component, or a lawful national security intelligence investigation conducted by an authorized agency or office within a DoD Component. National security intelligence investigations include background security investigations and those investigations conducted for the purpose of obtaining affirmative or counterintelligence information.

C3.2.1.7.3. The right of individual litigants to investigative records currently available by law (such as, the Jencks Act, 18 U.S.C. 3500, (reference (w)) is not diminished.

C3.2.1.7.4. <u>Exclusions</u>. Excluded from the above exemption are the below two situations applicable to the Department of Defense. (Components considering invoking an exclusion should first consult with the Department of Justice, Office of Information and Privacy.)

C3.2.1.7.4.1. Whenever a request is made that involves access to records or information compiled for law enforcement purposes, and the investigation or proceeding involves a possible violation of criminal law where there is reason to believe that the subject of the investigation or proceeding is unaware of its pendency, and the disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings, Components may, during only such times as that circumstance continues, treat the records or information as not subject to the FOIA. In such situation, the response to the requester will state that no records were found.

C3.2.1.7.4.2. Whenever informant records maintained by a criminal law enforcement organization within a DoD Component under the informant's name or personal identifier are requested by a third party using the informant's name or personal identifier, the Component may treat the records as not subject to the FOIA, unless the informant's status as an informant has been officially confirmed. If it is determined that the records are not subject to 5 U.S.C. 552(b)(7) (reference (a)), the response to the requester will state that no records were found.

C3.2.1.8. Number 8. (5 U.S.C. 552 (b)(8) (reference (a)). Those contained 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.

C3.2.1.9. Number 9. (5 U.S.C. 552 (b)(9) (reference (a)). Those containing geological and geophysical information and data (including maps) concerning wells.

C4. CHAPTER 4

FOR OFFICIAL USE ONLY

C4.1. GENERAL PROVISIONS

C4.1.1. General. Information that has not been given a security classification pursuant to the criteria of an Executive Order, but which may be withheld from the public *because disclosure would cause a foreseeable harm to an interest protected by* one or more FOIA exemptions 2 through 9 (see Chapter 3) shall be considered as being for official use only (FOUO). No other material shall be considered FOUO and FOUO is not authorized as an anemic form of classification to protect national security interests. Additional information on FOUO and other controlled, unclassified information may be found in reference (g) *or by contacting the Directorate for Security, Office of the Assistant Secretary of Defense (Command, Control, Communications and Intelligence)*.

C4.1.2. Prior FOUO Application. The prior application of FOUO markings is not a conclusive basis for withholding a record that is requested under the FOIA. When such a record is requested, the information in it shall be evaluated to determine whether *disclosure would result in a foreseeable harm to an interest protected by one or more FOIA exemptions 2 through 9. Even* if any exemptions apply, the record *shall* be released as a discretionary matter when it is determined that *there is no foreseeable harm to an interest protected by the exemptions*.

C4.1.3. Historical Papers. Records such as notes, working papers, and drafts retained as historical evidence of DoD Component actions enjoy no special status apart from the exemptions under the FOIA (reference (a)).

C4.1.4. Time to Mark Records. The marking of records at the time of their creation provides notice of FOUO content and facilitates review when a record is requested under the FOIA. Records requested under the FOIA that do not bear such markings shall not be assumed to be releasable without examination for the presence of information that requires continued protection and qualifies as exempt from public release.

C4.1.5. Distribution Statement. Information in a technical document that requires a distribution statement pursuant to DoD Directive 5230.24 (reference (x)) shall bear that statement and may be marked FOUO, as appropriate.

C4.2. MARKINGS

C4.2.1. <u>Location of Markings</u>

C4.2.1.1. An unclassified document containing FOUO information shall be marked "For Official Use Only" at the bottom on the outside of the front cover (if any), on each page containing FOUO information, and on the outside of the back cover (if any). ***Each paragraph containing FOUO information shall be marked as such.***

C4.2.1.2. Within a classified document, an individual page that contains both FOUO and classified information shall be marked at the top and bottom with the highest security classification of information appearing on the page. Individual paragraphs shall be marked at the appropriate classification level, as well as unclassified or FOUO, as appropriate.

C4.2.1.3. Within a classified document, an individual page that contains FOUO information but no classified information shall be marked "For Official Use Only" at the top and bottom of the page, ***as well as each paragraph that contains FOUO information.***

C4.2.1.4. Other records, such as photographs, films, tapes, or slides, shall be marked "For Official Use Only" or "FOUO" in a manner that ensures that a recipient or viewer is aware of the status of the information therein.

C4.2.1.5. FOUO material transmitted outside the Department of Defense requires application of an expanded marking to explain the significance of the FOUO marking. This may be accomplished by typing or stamping the following statement on the record prior to transfer:

This document contains information

EXEMPT FROM MANDATORY DISCLOSURE

under the FOIA. Exemption(s)….. applies/apply.

C4.2.1.5. (AF) Record owners may also add the following sentence to the statement above: “(Further distribution is prohibited without the approval of (owner’s organization, office symbol, phone).)”

C4.3. <u>DISSEMINATION AND TRANSMISSION</u>

C4.3.1. <u>Release and Transmission Procedures</u>. Until FOUO status is terminated, the release and transmission instructions that follow apply:

C4.3.1.1. FOUO information may be disseminated within DoD Components and between officials of DoD Components and DoD contractors, consultants, and grantees to conduct official business for the Department of Defense. Recipients shall be made aware of the status of such information, and transmission shall be by means that preclude unauthorized public disclosure. Transmittal documents shall call attention to the presence of FOUO attachments.

C4.3.1.1. (AF) When deciding whether to send FOUO records over facsimile equipment, balance the sensitivity of the records against the risk of disclosure. When faxing, use cover sheets to indicate FOUO attachments (i.e., AF Form 3227, **Privacy Act Cover Sheet**, for Privacy Act information). Consider the location of sending and receiving machines and ensure authorized personnel are available to receive FOUO information as soon as it is transmitted.

C4.3.1.2. DoD holders of FOUO information are authorized to convey such information to officials in other Departments and Agencies of the Executive and Judicial Branches to fulfill a government function, except to the extent prohibited by the Privacy Act. Records thus transmitted shall be marked "For Official Use Only," and the recipient shall be advised that the information may qualify for exemption from public disclosure, pursuant to the FOIA, and that special handling instructions do or do not apply.

C4.3.1.3. Release of FOUO information to Members of Congress is governed by DoD Directive 5400.4 (reference (y)). Release to the GAO is governed by DoD Directive 7650.1 (reference (z)). Records released to the Congress or GAO should be reviewed to determine whether the information warrants FOUO status. If not, prior FOUO markings shall be removed or effaced. If withholding criteria are met, the records shall be marked FOUO and the recipient provided an explanation for such exemption and marking. Alternatively, the recipient may be requested, without marking the record, to protect against its public disclosure for reasons that are explained.

C4.3.1.3. (AF) For Privacy Act records, refer to AFI 37-132 (converting to AFI 33-332) for specific disclosure rules. For releases to GAO and Congress, refer to AFI 90-401, *Air Force Relations With Congress* and AFI 65-401, *Relations With the General Accounting Office*.

C4.3.2. <u>Transporting FOUO Information</u>. Records containing FOUO information shall be transported in a manner that prevents disclosure of the contents. When not commingled with classified information, FOUO information may be sent via first-class mail or parcel post. Bulky shipments, such as distributions of FOUO Directives or testing materials, that otherwise qualify under postal regulations, may be sent by fourth-class mail.

C4.3.3. <u>Electronically and Facsimile Transmitted Messages</u>. Each part of electronically and facsimile transmitted messages containing FOUO information shall be marked appropriately. Unclassified messages containing FOUO information shall contain the abbreviation "FOUO"

before the beginning of the text. Such messages and facsimiles shall be transmitted in accordance with communications security procedures whenever practicable.

C4.4. SAFEGUARDING FOUO INFORMATION

C4.4.1. During Duty Hours. During normal working hours, records determined to be FOUO shall be placed in an out-of-sight location if the work area is accessible to non-government personnel.

C4.4.2. During Nonduty Hours. At the close of business, FOUO records shall be stored so as to prevent unauthorized access. Filing such material with other unclassified records in unlocked files or desks, etc., is adequate when normal U.S. Government or Government-contractor internal building security is provided during nonduty hours. When such internal security control is not exercised, locked buildings or rooms normally provide adequate after-hours protection. If such protection is not considered adequate, FOUO material shall be stored in locked receptacles such as file cabinets, desks, or bookcases. FOUO records that are subject to the provisions of the National Security Act of 1959 (reference (aa)) shall meet the safeguards outlined for that group of records.

C4.5. TERMINATION, DISPOSAL AND UNAUTHORIZED DISCLOSURES

C4.5.1. Termination. The originator or other competent authority; e.g., initial denial and appellate authorities, shall terminate "For Official Use Only" markings or status when circumstances indicate that the information no longer requires protection from public disclosure. When FOUO status is terminated, all known holders shall be notified, to the extent practical. Upon notification, holders shall efface or remove the "For Official Use Only" markings, but records in file or storage need not be retrieved solely for that purpose.

C4.5.2. Disposal

C4.5.2.1. Nonrecord copies of FOUO materials may be destroyed by tearing each copy into pieces to prevent reconstructing, and placing them in regular trash containers. When local circumstances or experience indicates that this destruction method is not sufficiently protective of FOUO information, local authorities may direct other methods but must give due consideration to the additional expense balanced against the degree of sensitivity of the type of FOUO information contained in the records.

C4.5.2.2. Record copies of FOUO documents shall be disposed of in accordance with the disposal standards established under 44 U.S.C. 3301-3314 (reference (ab)), as implemented by DoD Component instructions concerning records disposal.

C4.5.2.2. (AF) You may recycle FOUO material. Safeguard the FOUO documents or information to prevent unauthorized disclosure until recycling. Recycling contracts must include specific responsibilities and requirements on protecting and destroying FOUO and Privacy Act materials.

C4.5.3. <u>Unauthorized Disclosure</u>. The unauthorized disclosure of FOUO records does not constitute an unauthorized disclosure of DoD information classified for security purposes. Appropriate administrative action shall be taken, however, to fix responsibility for unauthorized disclosure whenever feasible, and appropriate disciplinary action shall be taken against those responsible. Unauthorized disclosure of FOUO information that is protected by the Privacy Act (reference (d)) may also result in civil and criminal sanctions against responsible persons. The DoD Component that originated the FOUO information shall be informed of its unauthorized disclosure.

C5. CHAPTER 5

RELEASE AND PROCESSING PROCEDURES

C5.1. GENERAL PROVISIONS

C5.1.1. Public Information

C5.1.1.1. Since the policy of the Department of Defense is to make the maximum amount of information available to the public consistent with its other responsibilities, written requests for a DoD record made under the provisions of 5 U.S.C. 552 (a)(3) (reference (a)) of the FOIA may be denied only when:

C5.1.1.1.1. Disclosure would result in a foreseeable harm to an interest protected by a FOIA exemption, and the record is subject to one or more of the exemptions of the FOIA.

C5.1.1.1.2. The record has not been described well enough to enable the DoD Component to locate it with a reasonable amount of effort by an employee familiar with the files.

C5.1.1.1.3. The requester has failed to comply with the procedural requirements, including the written agreement to pay or payment of any required fee imposed by the instructions of the DoD Component concerned. When personally identifiable information in a record is requested by the subject of the record or the subject's attorney, notarization of the request, or a statement certifying under the penalty of perjury that their identity is true and correct may be required. Additionally, written consent of the subject of the record is required for disclosure from a Privacy Act System of records, even to the subject's attorney.

C5.1.1.2. Individuals seeking DoD information should address their FOIA requests to one of the addresses listed in Appendix AP2.

C5.1.1.2. (AF) Individuals seeking Air Force information should address requests to an address listed in Appendix 2. MAJCOM FOIA office phone numbers and mailing addresses are available on the Air Force FOIA Web Page at *http://www.foia.af.mil*.

C5.1.1.2.1. (Added)(AF) A list of Air Force FOIA processing steps, from receipt of the request through the final disposition of an administrative appeal, is at Appendix 9, which also includes guidance on preparing and processing an Air Force FOIA appeal package.

C5.1.1.2.2. (Added)(AF) Air Force Host Tenant Relationships. The Air Force host base FOIA manager may log, process, and report FOIA requests for Air Force tenant units. In such cases, the host base FOIA office refers all recommended denials and "no records" appeals to the Air Force tenant MAJCOM FOIA manager. This does not apply to the Air National Guard (ANG), Air Force Reserves, or to disclosure authorities for specialized records.

C5.1.1.2.2. (Added)(AFSPC) Tenant unit commander or designee signs response letter to requester when records are totally releasable and forwards original signed letter with the case file to the host installation FOIA Manager for processing. Tenant unit commander signs letter recommending partial or total denial of records to tenant's MAJCOM through host installation FOIA Manager.

C5.1.2. <u>Requests from Private Parties</u>. The provisions of the FOIA are reserved for persons with private interests as opposed to U.S. Federal Agencies seeking official information. Requests from private persons will be made in writing, and should clearly show all other addressees within the Federal Government to which the request was also sent. This procedure will reduce processing time requirements, and ensure better inter- and intra-agency coordination. However, if the requester does not show all other addressees to which the request was also sent, DoD Components shall still process the request. DoD Components should encourage requesters to send requests by mail, facsimile, or by electronic means. Disclosure of records to individuals under the FOIA is considered public release of information, except as provided for in subsections C1.5.6. and C3.2.1., above.

C5.1.3. <u>Requests from Government Officials</u>. Requests from officials of State or local Governments for DoD Component records shall be considered the same as any other requester. Requests from members of Congress not seeking records on behalf of a Congressional Committee, Subcommittee, either House sitting as a whole, or made on behalf of their constituents shall be considered the same as any other requester (see also subsections C1.5.6., above and C5.1.4., below). Requests from officials of foreign governments shall be considered the same as any other requester. Requests from officials of foreign governments that do not invoke the FOIA shall be referred to appropriate foreign disclosure channels and the requester so notified.

C5.1.3. (AF) Use FOIA procedures in this supplement to process any congressional request citing FOIA, or covering a constituent letter citing FOIA. This does not apply to requests from a Congressional Committee or Subcommittee Chair on behalf of the committee or subcommittee.

C5.1.4. <u>Privileged Release *Outside of the FOIA* to U.S. Government Officials</u>

C5.1.4.1. Records exempt from release to the public under the FOIA may be disclosed in accordance with DoD Component regulations to agencies of the Federal Government, whether legislative, executive, or administrative, as follows:

C5.1.4.1.1. In response to a request of a Committee or Subcommittee of Congress, or to either House sitting as a whole in accordance with DoD Directive 5400.4 (reference (y));

C5.1.4.1.2. To other Federal Agencies, both executive and administrative, as determined by the head of a DoD Component or designee;

C5.1.4.1.3. In response to an order of a Federal court, DoD Components shall release information along with a description of the restrictions on its release to the public;

C5.1.4.2. DoD Components shall inform officials receiving records under the provisions of this paragraph that those records are exempt from public release under the FOIA. DoD Components also shall advise officials of any special handling instructions. Classified information is subject to the provisions of DoD 5200.1-R (reference (g)), and information contained in Privacy Act systems of records is subject to DoD 5400.11-R (reference (v)).

C5.1.5. <u>Consultation with Affected DoD Component</u>

C5.1.5.1. When a DoD Component receives a FOIA request for a record in which an affected DoD organization (including a Combatant Command) has a clear and substantial interest in the subject matter, consultation with that affected DoD organization is required. As an example, where a DoD Component receives a request for records related to DoD operations in a foreign country, the cognizant Combatant Command for the area involved in the request shall be consulted before a release is made. Consultations may be telephonic, electronic, or in hard copy.

C5.1.5.2. The affected DoD Component shall review the circumstances of the request for host- nation relations, and provide, where appropriate, FOIA processing assistance to the responding DoD Component regarding release of information. Responding DoD Components shall provide copies of responsive records to the affected DoD Component when requested by the affected DoD Component. The affected DoD Component shall receive a courtesy copy of all releases in such circumstances.

C5.1.5.3. Nothing in the above paragraphs shall impede the processing of the FOIA request initially received by a DoD Component.

C5.2. <u>INITIAL DETERMINATIONS</u>

C5.2.1. <u>Initial Denial Authority</u>

C5.2.1.1. Components shall limit the number of IDAs appointed. In designating its IDAs, a DoD Component shall balance the goals of centralization of authority to promote uniform decisions and decentralization to facilitate responding to each request within the time limitations of the FOIA.

C5.2.1.1. (AF) See paragraph C1.4.5. for the expanded definition of Air Force IDAs, and paragraph C1.5.3.5 for responsibilities of Air Force IDAs.

C5.2.1.1. **(AFSPC)** See paragraph C1.4.5. for a definition of AFSPC IDAs.

C5.2.1.2. The initial determination whether to make a record available upon request may be made by any suitable official designated by the DoD Component in published regulations. The presence of the marking "For Official Use Only" does not relieve the designated official of the responsibility to review the requested record for the purpose of determining whether an exemption under the FOIA is applicable.

C5.2.1.2. (AF) Disclosure Authorities make final decisions on providing releasable records within the time limits and provide recommendations to the IDA on proposed denials and partial denials after coordination with the appropriate FOIA and JA office. Normally disclosure authorities are division chiefs or higher at Air Staff level. MAJCOMs will designate their disclosure authority levels. The level should be high enough so a responsible authority makes the disclosure according to the policies outlined in this supplement. At out sourced units or functions, the disclosure authority must be a government official. Contractors who are functional OPRs for official government records are not authorized to make the decision to disclose government records.

C5.2.1.2. (AFSPC) The following are designated as disclosure authorities for AFSPC records.

C5.2.1.2.1. (AFSPC) Directors and Division Chiefs within HQ AFSPC.

C5.2.1.2.2. (AFSPC) Wing commanders and vice commanders, and two-letter staff offices (JA, PA, etc.).

C5.2.1.2.3. (AFSPC) Group commanders and deputy commanders.

C5.2.1.2.4. (AFSPC) Squadron and detachment commanders.

C5.2.1.2.5. (AFSPC) HQ AFSPC/IGQ is the release authority for Inspector General (IG) complaint and investigative records. HQ AFSPC/IGI is the release authority for inspection records.

C5.2.1.3. The officials designated by DoD Components to make initial determinations should consult with public affairs officers (PAOs) to become familiar with subject matter that is considered to be newsworthy, and advise PAOs of all requests from news media representatives. In addition, the officials should inform PAOs in advance when they intend to withhold or partially withhold a record, if it appears that the withholding action may be challenged in the media.

C5.2.1.3. (AF) On receipt, Air Force FOIA offices will promptly inform Air Force PAOs of all FOIA requests that are potentially newsworthy, or that are submitted by news media requesters. FOIA offices will coordinate final replies for such cases with public affairs.

C5.2.2. Reasons for Not Releasing a Record. The following are reasons for not complying with a request for a record under 5 U.S.C. 552(a)(3) (reference (a)):

C5.2.2.1. *No Records*. A *reasonable* search of files failed to identify responsive records.

C5.2.2.2. *Referrals*. The request is transferred to another DoD Component, or to another Federal Agency.

C5.2.2.3. *Request Withdrawn*. The request is withdrawn by the requester.

C5.2.2.4. Fee-Related Reason. The requester is unwilling to pay fees associated with a request; the requester is past due in the payment of fees from a previous FOIA request; or the requester disagrees with the fee estimate.

***C5.2.2.5. 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.**

C5.2.2.6. *Not a Proper FOIA Request for Some Other Reason*. The requester has failed unreasonably to comply with procedural requirements*, other than fee-related,* imposed by this Regulation or DoD Component supplementing regulations.

C5.2.2.7. *Not an Agency Record*. The information requested is not a record within the meaning of the FOIA and this Regulation.

C5.2.2.8. Duplicate Request. The request is a duplicate request (e.g., a requester asks for the same information more than once). This includes identical requests received via different means (e.g., electronic mail, facsimile, mail, courier) at the same or different times.

C5.2.2.9. Other (Specify). Any other reason a requester does not comply with published rules other than those outlined above.

C5.2.2.10. *Partial or Total Denial*. The record is denied in whole or in part in accordance with procedures set forth in the FOIA.

C5.2.3. Denial Tests. To deny a requested record that is in the possession and control of a DoD Component, it must be determined that disclosure of the record would result in a foreseeable harm to an interest protected by a FOIA exemption, and the record is exempt under one or more of the exemptions of the FOIA. An outline of the FOIA's exemptions is contained in Chapter 3 of this Regulation.

C5.2.4. Reasonably Segregable Portions. Although portions of some records may be denied, the remaining reasonably segregable portions must be released to the requester when it reasonably can be assumed that a skillful and knowledgeable person could not reconstruct the excised information. Unless indicating the extent of the deletion would harm an interest protected by an exemption, the amount of deleted information shall be indicated on the released portion of paper records by use of brackets or darkened areas indicating removal of information. In no case shall 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 shall be indicated at the place in the record such deletion was made, unless including the indication would harm an interest protected by the exemption under which the deletion is made. This may be done by use of brackets, shaded areas, or some other identifiable technique that will clearly show the limits of the deleted information. When a record is denied in whole, the response advising the requester of that determination will specifically state that it is not reasonable to segregate portions of the record for release.

C5.2.4. (AF) Delete information exempt from release under the FOIA from copies of otherwise releasable records. Do not release copies that would permit the requester to “read through the marking." Examples of records with deletions of exempted data are in Appendix 10.

C5.2.5. <u>Response to Requester</u>.

C5.2.5.1. Whenever possible, initial determinations to release or deny a record normally shall be made and the decision reported to the requester within 20 working days after receipt of the request by the official designated to respond. When a DoD Component has a significant number of pending requests which prevent a response determination within the 20 working day period, the requester shall be so notified in an interim response, and advised whether their request qualifies for the fast track or slow track within the DoD Components’ multitrack processing system. Requesters who do not meet the criteria for fast track processing shall be given the opportunity to limit the scope of their request in order to qualify for fast track processing. See also subsection C5.1.4. above, for greater detail on multitrack processing and compelling need meriting expedited processing.

C5.2.5.1. (AF) See also paragraphs C1.5.3.7 and C1.5.4.2. Examples of interim response letters to requesters are included in Appendix 7.

C5.2.5.2. When a decision is made to release a record, a copy should be made available promptly to the requester once he has complied with preliminary procedural requirements.

C5.2.5.3. When a request for a record is denied in whole or in part, the official designated to respond shall inform the requester in writing of the name and title or position of the official who made the determination, and shall explain to the requester the basis for the determination in sufficient detail to permit the requester to make a decision concerning appeal. The requester specifically shall be informed of the exemptions on which the denial is based, inclusive of a brief statement describing what the exemption(s) cover. When the initial denial is based in whole or in part on a security classification, the explanation should include a summary of the applicable Executive Order criteria for classification, as well as an explanation, to the extent reasonably feasible, of how those criteria apply to the particular record in question. The requester shall also be advised of the opportunity and procedures for appealing an unfavorable determination to a higher final authority within the DoD Component.

C5.2.5.3. (AF) See also paragraph C3.2.1.1.2 for more detail on Air Force procedures for processing FOIA requests for classified records.

C5.2.5.4. The final response to the requester should contain information concerning the fee status of the request, consistent with the provisions of Chapter 6, this

Regulation. ***When a requester is assessed fees for processing a request, the requester's fee category shall be specified in the response letter. Components also shall provide the requester with a complete cost breakdown (e.g., 15 pages of office reproduction at $0.15 per page; 5 minutes of computer search time at $43.50 per minute, 2 hours of professional level search at $25 per hour, etc.) in the response letter.***

C5.2.5.5. The explanation of the substantive basis for a denial shall include specific citation of the statutory exemption applied under provisions of this Regulation; e.g., 5 U.S.C. 552 (b)(1) (reference (a)). Merely referring to a classification; to a "For Official Use Only" marking on the requested record; or to this Regulation or a DoD Component's regulation does not constitute a proper citation or explanation of the basis for invoking an exemption.

C5.2.5.6. When the time for response becomes an issue, the official responsible for replying shall acknowledge to the requester the date of the receipt of the request.

C5.2.5.7. When denying a request for records, in whole or in part, a DoD Component shall make a reasonable effort to estimate the volume of the records denied and provide this estimate to the requester, unless providing such an estimate would harm an interest protected by an exemption of the FOIA. This estimate should be in number of pages or in some other reasonable form of estimation, unless the volume is otherwise indicated through deletions on records disclosed in part.

C5.2.5.8. When denying a request for records in accordance with a statute qualifying as a FOIA exemption 3 statute, DoD Components shall, in addition to stating the particular statute relied upon to deny the information, also state whether a court has upheld the decision to withhold the information under the particular statute, and a concise description of the scope of the information being withheld.

C5.2.6. <u>Extension of Time</u>

C5.2.6.1. In unusual circumstances, when additional time is needed to respond to the initial request, the DoD Component shall acknowledge the request in writing within the 20 day period, describe the circumstances requiring the delay, and indicate the anticipated date for a substantive response that may not exceed 10 additional working days, except as provided below:

C5.2.6.2. With respect to a request for which a written notice has extended the time limits by 10 additional working days, and the Component determines that it cannot make a response determination within that additional 10 working day period, the requester shall be notified and provided an opportunity to limit the scope of the request so that it may be processed within the extended time limit, or an opportunity to arrange an alternative time frame for

processing the request or a modified request. Refusal by the requester to reasonably modify the request or arrange for an alternative time frame shall be considered a factor in determining whether exceptional circumstances exist with respect to DoD Components' request backlogs. Exceptional circumstances do not include a delay that results from predictable component backlogs, unless the DoD Component demonstrates reasonable progress in reducing its backlog.

C5.2.6.2. (AF) See paragraph C1.5.4.1 for examples of interim letters to a requester proposing they modify their request and/or to arrange an alternate time frame for responding to the request are included in Appendix 7.

C5.2.6.3. Unusual circumstances that may justify delay are:

C5.2.6.3.1. The need to search for and collect the requested records from other facilities that are separate from the office determined responsible for a release or denial decision on the requested information.

C5.2.6.3.2. The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are requested in a single request.

C5.2.6.3.3. The need for consultation, which shall be conducted with all practicable speed, with other agencies having a substantial interest in the determination of the request, or among two or more DoD Components having a substantial subject-matter interest in the request.

C5.2.6.3.4. DoD Components may aggregate certain requests by the same requester, or by a group of requesters acting in concert, if the DoD Component reasonably believes that such requests actually constitute a single request, which would otherwise satisfy the unusual circumstances set forth above, and the requests involve clearly related matters. Multiple requests involving unrelated matters shall not be aggregated. If the requests are aggregated under these conditions, the requester or requesters shall be so notified.

C5.2.6.3.5. In cases where the statutory time limits cannot be met and no informal extension of time has been agreed to, the inability to process any part of the request within the specified time should be explained to the requester with a request that he agree to await a substantive response by an anticipated date. It should be made clear that any such agreement does not prejudice the right of the requester to appeal the initial decision after it is made. DoD Components are reminded that the requester still retains the right to treat this delay as a defacto denial with full administrative remedies.

C5.2.6.3.6. As an alternative to the taking of formal extensions of time as described in subsection C5.2.6. above, the negotiation by the cognizant FOIA coordinating office of informal extensions in time with requesters is encouraged where appropriate.

C5.2.7. Misdirected Requests. Misdirected requests shall be forwarded promptly to the DoD Component or other Federal Agency with the responsibility for the records requested. The period allowed for responding to the request misdirected by the requester shall not begin until the request is received by the DoD Component that manages the records requested.

C5.2.8. <u>Records of Non-U.S. Government Source</u>

C5.2.8.1. When a request is received for a record that falls under exemption 4 (see subsection Number 4 of Chapter 3, above), that was obtained from a non-U.S. Government source, or for a record containing information clearly identified as having been provided by a non-U.S. Government source, the source of the record or information [also known as "the submitter" for matters pertaining to proprietary data under 5 U.S.C. 552 (reference (a)) Exemption (b)(4)] [Chapter 3, section 2, subsection C3.2.1., Number 4, this Regulation and E. O. 12600 (reference (ac)),] shall be notified promptly of that request and afforded reasonable time (e.g., 30 calendar days) to present any objections concerning the release, unless it is clear that there can be no valid basis for objection. This practice is required for those FOIA requests for data not deemed clearly exempt from disclosure under exemption (b)(4) of reference (a). If, for example, the record or information was provided with actual or presumptive knowledge of the non-U.S. Government source and established that it would be made available to the public upon request, there is no obligation to notify the source. Any objections shall be evaluated. The final decision to disclose information claimed to be exempt under exemption (b)(4) shall be made by an official equivalent in rank to the official who would make the decision to withhold that information under the FOIA. When a substantial issue has been raised, the DoD Component may seek additional information from the source of the information and afford the source and requester reasonable opportunities to present their arguments on the legal and substantive issues involved prior to making an agency determination. When the source advises it will seek a restraining order or take court action to prevent release of the record or information, the requester shall be notified, and action on the request normally shall not be taken until after the outcome of that court action is known. When the requester brings court action to compel disclosure, the submitter shall be promptly notified of this action.

C5.2.8.1. (AF) The Air Force, in compliance with Executive Order 12600, will advise submitters of contractor-submitted records when a FOIA requester seeks the release of such records, regardless of any initial determination as to whether FOIA exemption (b)(4) applies. (See paragraph C3.2.1.4.8. and Appendix 11.) Due to a change to the Title 48 CFR, submitter notification is not required prior to release of unit prices contained in contracts awarded based upon solicitations issued after 1 January 1998. For solicitations issued before 1 January 1998, conduct a normal submitter notice.

Unit prices contained in proposals provided prior to contract award are protected from release, as are all portions of unsuccessful proposals (before and after contract award) (10 USC 2305(g)).

C5.2.8.1. (AFSPC) FOIA Manager interfaces with the local contracting office. It is the responsibility of the contracting office to obtain the submitter's comments on releasability of data.

C5.2.8.1.1. (Added)(AFSPC) Consider the following documents part of the contract when responding to a request for a contract:

C5.2.8.1.1.1. (Added)(AFSPC) Basic contract with attachments listed in Section J, such as the Statement of Work; DD Form 254, **Contract Security Classification Specification**; DD Form 1423, **Contract Data Requirements List.**

C5.2.8.1.1.2. (Added)(AFSPC) Modifications, if any.

C5.2.8.1.1.3. (Added)(AFSPC) The contracting activity should contact the requester to clarify if attachments and modifications are to be considered a part of the request when they are voluminous and have not been specifically requested. Advise the requester at that time of the estimated cost to provide all the documents. If the requester elects to exclude them, ask the requester to clarify in writing, through the FOIA Manager, which documents are excluded from the request.

C5.2.8.1.2 (Added)(AFSPC) Other contract records, if not listed in paragraph C5.2.8.1.1, must be specifically requested. For example:

C5.2.8.1.2.1. (Added)(AFSPC) Proposals (Technical, Management, Cost).

C5.2.8.1.2.2. (Added)(AFSPC) Deliverables specified under the contract.

C5.2.8.1.2.3. (Added)(AFSPC) Abstract of bids or proposals received.

C5.2.8.1.2.4. (Added)(AFSPC) Bidders' Mailing List.

C5.2.8.1.3. (Added)(AFSPC) It is the responsibility of the contracting activity to obtain the submitter's comments on releasability of data submitted by a contractor.

C5.2.8.1.4. (Added)(AFSPC) Obtain the submitter's comments on the releasability of a record, regardless of its age, if it is submitted from outside the AF.

C5.2.8.1.5. (Added)(AFSPC) Use the format at AP7.13.3.1 when notifying a submitter of a request for its records.

C5.2.8.1.6 (Added)(AFSPC) Use the format at AP7.13.3.2 when notifying the submitter of determination to disclose records over the submitter's objection.

C5.2.8.2. If the submitted information is a proposal in response to a solicitation for a competitive proposal, and the proposal is in the possession and control of DoD, and meets the requirements of 10 U.S.C. 2305(g) (reference (p)), the proposal shall not be disclosed, and no submitter notification and subsequent analysis is required. The proposal shall be withheld from public disclosure pursuant to reference (p) and exemption (b)(3) of reference (a). This statute does not apply to bids, unsolicited proposals, or any proposal that is set forth or incorporated by reference in a contract between a DoD Component and the offeror that submitted the proposal. In such situations, normal submitter notice shall be conducted in accordance with paragraph C5.2.8.1., above, except for sealed bids that are opened and read to the public. The term proposal means information contained in or originating from any proposal, including a technical, management, or cost proposal submitted by an offeror in response to solicitation for a competitive proposal, but does not include an offeror's name or total price or unit prices when set forth in a record other than the proposal itself. Submitter notice, and analysis as appropriate, are required for exemption (b)(4) matters that are not specifically incorporated in reference (p).

C5.2.8.3. If the record or information was submitted on a strictly voluntary basis, absent any exercised authority that prescribes criteria for submission, and after consultation with the submitter, it is absolutely clear that the record or information would customarily not be released to the public, the submitter need not be notified. Examples of exercised authorities prescribing criteria for submission are statutes, Executive Orders, regulations, invitations for bids, requests for proposals, and contracts. Records or information submitted under these authorities are not voluntary in nature. When it is not clear whether the information was submitted on a voluntary basis, absent any exercised authority, and whether it would customarily be released to the public by the submitter, notify the submitter and ask that it describe its treatment of the information, and render an objective evaluation. If the decision is made to release the information over the objection of the submitter, notify the submitter and afford the necessary time to allow the submitter to seek a restraining order, or take court action to prevent release of the record or information.

C5.2.8.4. The coordination provisions of this paragraph also apply to any non-U.S. Government record in the possession and control of the DoD from multi-national organizations, such as the North Atlantic Treaty Organization (NATO), United Nations Commands, the North American Aerospace Defense Command (NORAD), the Inter-American Defense Board, or foreign

governments. Coordination with foreign governments under the provisions of this paragraph may be made through Department of State, or the specific foreign embassy.

C5.2.8.4. (AF) Department of State Involvement. Air Force FOIA managers will notify their MAJCOM (or equivalent) FOIA office, in writing, via fax or e-mail when the Department of State becomes involved in any Air Force FOIA actions. The MAJCOM FOIA office will provide 11 CS/SCSR, via fax or e-mail, a summary of the issues involved, and the name, phone number, mailing address and e-mail address of: their own FOIA office point of contact; the Air Force record OPR point of contact, the DoD component FOIA office point of contact (if any), and the Department of State point of contact. 11 CS/SCSR will inform SAF/IA of any State Department involvement in Air Force FOIA actions. (See paragraph C1.5.5.2.) An example of a memo advising 11 CS/SCSR of State Department involvement in an Air Force FOIA action is provided in Appendix 7.

C5.2.9. <u>File of Initial Denials</u>. Copies of all initial denials shall be 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 C5.2.2.* shall be maintained for a period of six years to meet the statute of limitations requirement.

C5.2.10. <u>Special Mail Services</u>. Components are authorized to use registered mail, certified mail, certificates of mailing and return receipts. However, their use should be limited to instances where it appears advisable to establish proof of dispatch or receipt of FOIA correspondence. *The requester shall be notified that they are responsible for the full costs of special services.*

C5.2.11. <u>Receipt Accounts</u>. The Treasurer of the United States has established two accounts for FOIA receipts, and all money orders or checks remitting FOIA fees should be made payable to the U.S. Treasurer. These accounts, which are described in paragraphs C5.2.11.1. and C5.2.11.2., below, shall be used for depositing all FOIA receipts, except receipts for *Working Capital* and non appropriated funded activities. Components are reminded that the below account numbers must be preceded by the appropriate disbursing office two digit prefix. *Working Capital* and non appropriated funded activity FOIA receipts shall be deposited to the applicable fund.

C5.2.11.1. Receipt Account 3210 Sale of Publications and Reproductions, Freedom of Information Act (reference (ad)). This account shall be used when depositing funds received from providing existing publications and forms that meet the Receipt Account Series description found in Federal Account Symbols and Titles.

C5.2.11.2. Receipt Account 3210 Fees and Other Charges for Services, Freedom of Information Act (reference (ad)). This account is used to deposit search fees, fees for duplicating and reviewing (in the case of commercial requesters) records to satisfy requests that could not be filled with existing publications or forms.

C5.3. APPEALS

C5.3.1. General. If the official designated by the DoD Component to make initial determinations on requests for records declines to provide a record because the official considers it exempt under one or more of the exemptions of the FOIA, that decision may be appealed by the requester, in writing, to a designated appellate authority. The appeal should be accompanied by a copy of the letter denying the initial request. Such appeals should contain the basis for disagreement with the initial refusal. Appeal procedures also apply to the disapproval of a fee category claim by a requester, disapproval of a request for waiver or reduction of fees, disputes regarding fee estimates, review on an expedited basis a determination not to grant expedited access to agency records, for no record determinations when the requester considers such responses adverse in nature*, not providing a response determination to a FOIA request within the statutory time limits, or any determination found to be adverse in nature by the requester. When denials have been made under the provisions of the Privacy Act and the FOIA, and the denied information is contained in a Privacy Act system of records, appeals shall be processed under both the Privacy Act and the FOIA. If the denied information is not maintained in a Privacy Act system of records, the appeal shall be processed under the FOIA.* Appeals of Office of the Secretary of Defense and Chairman of the Joint Chiefs of Staff determinations may be sent to the address in Appendix AP2, paragraph AP2.2.1. If a request is merely misaddressed, and the receiving DoD Component simply advises the requester of such and refers the request to the appropriate DoD Component, this shall not be considered a no record determination.

C5.3.1. (AF) FOIA requesters seeking Air Force records must address appeals to the Office of the Secretary of the Air Force, through the FOIA office of the IDA that denied the request. Requesters should attach a copy of the denial letter to their appeal and give reasons for appealing. Air Force IDAs may reconsider any prior denials and may grant all or part of a requester's appeal. When any appellate action sought by a FOIA requester is denied by an IDA, the IDA will include a statement that the issues raised in the appeal were considered and rejected (in full or in part) in any file sent to the Secretary of the Air Force in the course of a FOIA appeal action. Send all appeals to IDA decisions at the wing level through the MAJCOM FOIA office for sending to the Secretary of the Air Force's designated appellate authority, SAF/GCA (and Air Force Legal Services Agency [AFLSA/JACL]). (See paragraphs C1.4.6, C1.5.3.1, and C1.5.3.8.) Additional steps are required prior to sending an appeal file.

C5.3.1.1. (Added)(AF) MAJCOM FOIA offices and record OPRs are responsible for ensuring adequate preparation of the FOIA appeal package for reconsideration by the IDA. FOIA offices and records OPRs will coordinate with Air Force attorneys, who will provide written opinions on substantive issues raised in the appeal.

C5.3.1.2. (Added)(AF) If a requester appeals an Air Force "no records" determination, Air Force elements must search again or verify the adequacy of their first search. The package must include documents that show the Air Force element systematically tried to find responsive records. Tell, for example, what areas or offices were searched and how the search was conducted--manually, by

computer, by telephone, and so forth. In the event a requester sues the Air Force to contest a determination that no responsive records exist, formal affidavits are required to support the adequacy of any searches conducted.

C5.3.1.2. (Added)(AFSPC) Complete actions outlined in AF supplemental paragraph and then forward "no record" appeals to HQ AFSPC/SCMI (FOIA) after taking the following actions:

C5.3.1.2.1. (Added)(AFSPC) Obtain SJA's written legal review.

C5.3.1.2.2. (Added)(AFSPC) Assemble appeal package attachments IAW AP 9.5.

C5.3.1.3. (Added)(AF) FOIA requesters seeking to appeal denials involving Office of Personnel Management's controlled civilian personnel records must appeal to the Office of the General Counsel, Office of Personnel Management, 1900 E Street NW, Washington DC 20415.

C5.3.1.4. (Added)(AF) If a requester appeals a denial of a fee waiver, fee estimate, or fee reduction request, FOIA offices and record OPRs must account for actual and estimated costs of processing a request, and will include copies of the DD Forms 2086 or 2086-1 in the appeal package.

C5.3.1.5. (Added)(AF) When any appellate action sought by a FOIA requester is denied by an IDA, prepare the FOIA appeal package as specified in Appendix 9, and then the MAJCOM FOIA office forwards the appeal file to the Secretary of the Air Force's designated appellate authority, SAF/GCA (through AFLSA/JACL), for a final administrative determination.

C5.3.2. <u>Time of Receipt</u>. A FOIA appeal has been received by a DoD Component when it reaches the office of an appellate authority having jurisdiction. Misdirected appeals should be referred expeditiously to the proper appellate authority.

C5.3.2. (AF) Air Force activities will process appeal actions expeditiously to ensure they reach the Office of the Secretary of the Air Force in a timely manner.

C5.3.3. <u>Time Limits</u>

C5.3.3.1. The requester shall be advised to file an appeal so that it *is postmarked* no later than 60 calendar days after the date of the initial denial letter. *If no appeal is received, or if the appeal is postmarked after the conclusion of this 60-day period, the appeal may be considered closed. However, exceptions to the above may be considered on a case by case basis.* In cases where the requester is provided several incremental determinations for a single request, the time for the

appeal shall not begin until *the date of the final response*. Records that are denied shall be retained for a period of six years to meet the statute of limitations requirement.

C5.3.3.1. (AF) Any FOIA appeals received after the 60-day time limit are not processed, unless the requester provides adequate justification for failing to comply with the time limit. If a late appeal is received, and there is no adequate justification for failing to comply with the time limit, the FOIA office will advise the FOIA requester their appeal has been closed. An example of a closure letter is included in Appendix 7.

C5.3.3.2. Final determinations on appeals normally shall be made within 20 working days after receipt. When a DoD Component has a significant number of appeals preventing a response determination within 20 working days, the appeals shall be processed in a multitrack processing system, based at a minimum, on the three processing tracks established for initial requests. See subsection C1.5.4. above, this Regulation. All of the provisions of C1.5.4. apply also to appeals of initial determinations, to include establishing additional processing queues as needed.

C5.3.3.2. (AF) Appendix 7 includes examples of letters to FOIA requesters who have appealed any Air Force denial action taken on their requests.

C5.3.4. <u>Delay in Responding to an Appeal</u>

C5.3.4.1. If additional time is needed due to the unusual circumstances described in subsection C5.2.6., above, the final decision may be delayed for the number of working days (not to exceed 10), that were not used as additional time for responding to the initial request.

C5.3.4.2. If a determination cannot be made and the requester notified within 20 working days, the appellate authority shall acknowledge to the requester, in writing, the date of receipt of the appeal, the circumstances surrounding the delay, and the anticipated date for substantive response. Requesters shall be advised that, if the delay exceeds the statutory extension provision or is for reasons other than the unusual circumstances identified in subsection C5.2.6., above, they may consider their administrative remedies exhausted. They may, however, without prejudicing their right of judicial remedy, await a substantive response. The DoD Component shall continue to process the case expeditiously.

C5.3.4.2. (AF) For an appeal in process and not yet forwarded to AFLSA/JACL, the MAJCOM FOIA office is responsible for advising the requester of the status of the appeal. For an appeal in process at AFLSA/JACL, that office will advise the requester regarding status of the appeal.

C5.3.5. Response to the Requester

C5.3.5.1. When an appellate authority makes a final determination to release all or a portion of records withheld by an IDA, a written response and a copy of the records so released should be forwarded promptly to the requester after compliance with any preliminary procedural requirements, such as payment of fees.

C5.3.5.2. Final refusal of an appeal must be made in writing by the appellate authority or by a designated representative. The response, at a minimum, shall include the following:

C5.3.5.2.1. The basis for the refusal shall be explained to the requester in writing, both with regard to the applicable statutory exemption or exemptions invoked under provisions of the FOIA, and with respect to other appeal matters as set forth in subsection C5.3.1., above.

C5.3.5.2.2. When the final refusal is based in whole or in part on a security classification, the explanation shall include a determination that the record meets the cited criteria and rationale of the governing Executive Order, and that this determination is based on a declassification review, with the explanation of how that review confirmed the continuing validity of the security classification.

C5.3.5.2.3. The final denial shall include the name and title or position of the official responsible for the denial.

C5.3.5.2.4. In the case of appeals for total denial of records, the response shall advise the requester that the information being denied does not contain meaningful portions that are reasonably segregable.

C5.3.5.2.5. When the denial is based upon an exemption 3 statute (see subsection Number 3 of Chapter 3), the response, in addition to citing the statute relied upon to deny the information, shall state whether a court has upheld the decision to withhold the information under the statute, and shall contain a concise description of the scope of the information withheld.

C5.3.5.2.6. The response shall advise the requester of the right to judicial review.

C5.3.6. Consultation

C5.3.6.1. Final refusal 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 the DoD Office of the General Counsel.

C5.3.6.2. Tentative decisions to deny records that raise new or significant legal issues of potential significance to other Agencies of the Government shall be provided to the DoD Office of the General Counsel.

C5.4. JUDICIAL ACTIONS

C5.4.1. General

C5.4.1.1. This section states current legal and procedural rules for the convenience of the reader. The statements of rules do not create rights or remedies not otherwise available, nor do they bind the Department of Defense to particular judicial interpretations or procedures.

C5.4.1.2. A requester may seek an order from a U.S. District Court to compel release of a record after administrative remedies have been exhausted; i.e., when refused a record by the head of a Component or an appellate designee or when the DoD Component has failed to respond within the time limits prescribed by the FOIA and in this Regulation.

C5.4.2. Jurisdiction. The requester may bring suit in the U.S. District Court in the district in which the requester resides or is the requesters place of business, in the district in which the record is located, or in the District of Columbia.

C5.4.3. Burden of Proof. The burden of proof is on the DoD Component to justify its refusal to provide a record. The court shall evaluate the case de novo (anew) and may elect to examine any requested record in camera (in private) to determine whether the denial was justified.

C5.4.4. Actions by the Court

C5.4.4.1. When a DoD Component has failed to make a determination within the statutory time limits but can demonstrate due diligence in exceptional circumstances, to include negotiating with the requester to modify the scope of their request, the court may retain jurisdiction and allow the Component additional time to complete its review of the records.

C5.4.4.2. If the court determines that the requester's complaint is substantially correct, it may require the United States to pay reasonable attorney fees and other litigation costs.

C5.4.4.3. When the court orders the release of denied records, it may also issue a written finding that the circumstances surrounding the withholding raise questions whether DoD Component personnel acted arbitrarily and capriciously. In these cases, the special counsel of the Merit System Protection Board shall conduct an investigation to determine whether or not disciplinary action is warranted. The DoD Component is obligated to take the action recommended by the special counsel.

C5.4.4.2. The court may punish the responsible official for contempt when a DoD Component fails to comply with the court order to produce records that it determines have been withheld improperly.

C5.4.5. Non-United States Government Source Information. A requester may bring suit in a U.S. District Court to compel the release of records obtained from a non-government source or records based on information obtained from a non- government source. Such source shall be notified promptly of the court action. When the source advises that it is seeking court action to prevent release, the DoD Component shall defer answering or otherwise pleading to the complainant as long as permitted by the Court or until a decision is rendered in the court action of the source, whichever is sooner.

C5.4.6. FOIA Litigation. Personnel responsible for processing FOIA requests at the DoD Component level shall be aware of litigation under the FOIA. Such information will provide management insights into the use of the nine exemptions by Component personnel. Whenever a complaint under the FOIA is filed in a U.S. District Court, the DoD Component named in the complaint shall forward a copy of the complaint by any means to the Director, Freedom of Information and Security Review with an information copy to the DoD Office of the General Counsel, ATTN: Office of Legal Counsel.

C6. CHAPTER 6

FEE SCHEDULE

C6.1. GENERAL PROVISIONS

C6.1.1. Authorities. The Freedom of Information Act (reference (a)), as amended; the Paperwork Reduction Act (44 U.S.C. Chapter 35) (reference (ae)), as amended; the Privacy Act of 1974 (reference (d)), as amended; the Budget and Accounting Act of 1921 and the Budget and Accounting Procedures Act, as amended (see 31 U.S.C.) (reference (af)); and 10 U.S.C. 2328 (reference (ag)).

C6.1.2. Application

C6.1.2.1. The fees described in this Chapter apply to FOIA requests, and conform to the Office of Management and Budget Uniform Freedom of Information Act Fee Schedule and Guidelines (reference (ah)). They reflect direct costs for search, review (in the case of commercial requesters); and duplication of documents, collection of which is permitted by the FOIA. They are neither intended to imply that fees must be charged in connection with providing information to the public in the routine course of business, nor are they meant as a substitute for any other schedule of fees, such as *DoD 7000.14-R* (reference (ai)), which does not supersede the collection of fees under the FOIA. Nothing in this Chapter shall supersede fees chargeable under a statute specifically providing for setting the level of fees for particular types of records. A "statute specifically providing for setting the level of fees for particular types of records" (5 U.S.C. 552 (a)(4)(a)(vi)) (reference (a)) means any statute that enables a Government Agency such as the Government Printing Office (GPO) or the National Technical Information Service (NTIS), to set and collect fees. Components should ensure that when documents that would be responsive to a request are maintained for distribution by agencies operating statutory-based fee schedule programs such as the GPO or NTIS, they inform requesters of the steps necessary to obtain records from those sources.

C6.1.2.2. The term "direct costs" means those expenditures a Component actually makes in searching for, reviewing (in the case of commercial requesters), and duplicating documents to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing the work (the basic rate of pay for the employee 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 at Section C6.2. of this Chapter. Not included in direct costs are overhead expenses such as costs of space, heating or lighting the facility in which the records are stored.

C6.1.2.3. The term "search" includes all time spent looking, both manually and electronically, for material that is responsive to a request. 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 thereof are responsive to the request. Components should ensure that searches are done in the most efficient and least expensive manner so as to minimize costs for both the Component and the requester. For example, Components should not engage in line-by-line searches when duplicating an entire document known to contain responsive information would prove to be the less expensive and quicker method of complying with the request. Time spent reviewing documents in order to determine whether to apply one or more of the statutory exemptions is not search time, but review time. See paragraph C6.1.2.5., below, for the definition of review, and paragraphs C6.1.3.5.. and C6.2.2.2., below, for information pertaining to computer searches.

C6.1.2.4. The term "duplication" refers to the process of making a copy of a document in response to a FOIA request. Such copies can take the form of paper copy, microfiche, audiovisual, or machine readable documentation (e.g., magnetic tape or disc), among others. Every effort will be made to ensure that the copy provided is in a form that is reasonably usable, the requester shall be notified that the copy provided is the best available and that the Agency's master copy shall be made available for review upon appointment. For duplication of computer tapes and audiovisual, the actual cost, including the operator's time, shall be charged. In practice, if a Component estimates that assessable duplication charges are likely to exceed $25.00, it shall notify the requester of the estimate, unless the requester has indicated in advance his or her willingness to pay fees as high as those anticipated. Such a notice shall offer a requester the opportunity to confer with Component personnel with the object of reformulating the request to meet his or her needs at a lower cost.

C6.1.2.5. The term "review" refers to the process of examining documents located in response to a FOIA request to determine whether one or more of the statutory exemptions permit withholding. It also includes processing the documents for disclosure, such as excising them for release. Review does not include the time spent resolving general legal or policy issues regarding the application of exemptions. It should be noted that charges for commercial requesters may be assessed only for the initial review. Components may not charge for reviews required at the administrative appeal level of an exemption already applied. However, records or portions of records withheld in full under an exemption that is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. The costs for such a subsequent review would be properly assessable.

C6.1.3. Fee Restrictions

C6.1.3.1. No fees may be charged by any DoD Component if the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee. With the exception of requesters seeking documents for a commercial use, Components shall provide the first two hours of search time, and the first one hundred pages of duplication without charge. For example, for a request (other than one from a commercial requester) that involved two hours and ten minutes of search time, and resulted in one hundred and five pages of documents, a

Component would determine the cost of only ten minutes of search time, and only five pages of reproduction. If this processing cost was equal to, or less than, the cost to the Component for billing the requester and processing the fee collected, no charges would result.

C6.1.3.2. Requesters receiving the first two hours of search and the first one hundred pages of duplication without charge are entitled to such only once per request. Consequently, if a Component, after completing its portion of a request, finds it necessary to refer the request to a subordinate office, another DoD Component, or another Federal Agency to action their portion of the request, the referring Component shall inform the recipient of the referral of the expended amount of search time and duplication cost to date.

C6.1.3.3. The elements to be considered in determining the "cost of collecting a fee" are the administrative costs to the Component of receiving and recording a remittance, and processing the fee for deposit in the Department of Treasury's special account. The cost to the Department of Treasury to handle such remittance is negligible and shall not be considered in Components' determinations.

C6.1.3.3. (AF) For FOIA purposes, Air Force activities will consider the cost of collecting a fee to be $15 and will not assess requesters' fees for any amount less than $15.

C6.1.3.4. For the purposes of these restrictions, the word "pages" refers to paper copies of a standard size, which will normally be "8 1/2 x 11" or "11 x 14". Thus, requesters would not be entitled to 100 microfiche or 100 computer disks, for example. A microfiche containing the equivalent of 100 pages or 100 pages of computer printout however, might meet the terms of the restriction.

C6.1.3.5. In the case of computer searches, the first two free hours will be determined against the salary scale of the individual operating the computer for the purposes of the search. As an example, when the direct costs of the computer central processing unit, input-output devices, and memory capacity equal $24.00 (two hours of equivalent search at the clerical level), amounts of computer costs in excess of that amount are chargeable as computer search time. In the event the direct operating cost of the hardware configuration cannot be determined, computer search shall be based on the salary scale of the operator executing the computer search. See Section C6.2., this Chapter, for further details regarding fees for computer searches.

C6.1.4. <u>Fee Waivers</u>

C6.1.4.1. Documents shall be furnished without charge, or at a charge reduced below fees assessed to the categories of requesters in subsection C6.1.5. below, when the 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 the operations or activities of the Department of Defense and is not primarily in the commercial interest of the requester.

C6.1.4.2. When assessable costs for a FOIA request total $15.00 or less, fees shall be waived automatically for all requesters, regardless of category.

C6.1.4.3. Decisions to waive or reduce fees that exceed the automatic waiver threshold shall be made on a case-by-case basis, consistent with the following factors:

C6.1.4.3.1. 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."

C6.1.4.3.1.1. <u>The subject of the request.</u> Components should analyze whether the subject matter of the request involves issues that will significantly contribute to the public understanding of the operations or activities of the Department of Defense. Requests for records in the possession of the Department of Defense which 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 the operations or activities of the Department of Defense. 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. Similarly, disclosures of records of considerable age may or may not bear directly on the current activities of the Department of Defense; however, the age of a particular record shall not be the sole criteria for denying relative significance under this factor. It is possible to envisage an informative issue concerning the current activities of the Department of Defense, based upon historical documentation. Requests of this nature must be closely reviewed consistent with the requester's stated purpose for desiring the records and the potential for public understanding of the operations and activities of the Department of Defense.

C6.1.4.3.1.2. <u>The informative value of the information to be disclosed.</u> 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 shall inform the public on the operations or activities of the Department of Defense. While the subject of a request may contain information that concerns operations or activities of the Department of Defense, it may not always hold great potential for contributing to a meaningful understanding of these operations or activities. An example of such would be a previously released record that has been heavily redacted, the balance of which may contain only random words, fragmented sentences, or paragraph headings. A determination as to whether a record in this situation will contribute to the public understanding of the operations or activities of the Department of Defense must be approached with caution, and carefully weighed against the arguments offered by the requester. Another example is information already known to be in the public domain. Disclosure of duplicative, or nearly identical information already existing in the public domain may add no

meaningful new information concerning the operations and activities of the Department of Defense.

C6.1.4.3.1.3. The 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 requester or small segment of interested persons. The identity of the requester is essential in this situation in order to determine whether such requester has the capability and intention to disseminate the information to the public. Mere assertions of plans to author a book, researching a particular subject, doing doctoral dissertation work, or indigence are insufficient without demonstrating the capacity to further disclose the information in a manner that will be informative to the general public. 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.

C6.1.4.3.1.4. The significance of the contribution to public understanding. In applying this factor, Components must differentiate the relative significance or impact of the disclosure against the current level of public knowledge, or understanding which 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. Components shall not make value judgments as to whether the information is important enough to be made public.

C6.1.4.3.2. Disclosure of the information "is not primarily in the commercial interest of the requester."

C6.1.4.3.2.1. The existence and magnitude of a commercial interest. If the request is determined to be of a commercial interest, Components should address the magnitude of that interest to determine if the 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 obtaining certain records. Where it is difficult to determine whether the requester is of a commercial nature, Components may draw inference from the requester's identity and circumstances of the request. In such situations, the provisions of subsection C6.1.5. below, apply. Components are reminded that in order to apply the commercial standards of the FOIA, the requester's commercial benefit must clearly override any personal or non-profit interest.

C6.1.4.3.2.2. The primary interest in disclosure. Once a requester's commercial interest has been determined, Components should then determine if the

disclosure would be primarily in that interest. This requires a balancing test between the commercial interest of the request against any public benefit to be derived as a result of that disclosure. Where the public interest is served above and beyond that of the requester's commercial interest, a waiver or reduction of fees would be appropriate. Conversely, even if a significant public interest exists, and the relative commercial interest of the requester is determined to be greater than the public interest, then a waiver or reduction of fees would be inappropriate. 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, normally 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 normally be presumed to have an interest primarily of a commercial nature.

C6.1.4.4. Components are reminded that the factors and examples used in this subsection 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 request. When the element of doubt as to whether to charge or waive the fee cannot be clearly resolved, Components should rule in favor of the requester.

C6.1.4.5. In addition, the following additional circumstances describe situations where waiver or reduction of fees are most likely to be warranted:

C6.1.4.5.1. A record is voluntarily created to prevent an otherwise burdensome effort to provide voluminous amounts of available records, including additional information not requested.

C6.1.4.5.2. A previous denial of records is reversed in total, or in part, and the assessable costs are not substantial (e.g., $15.00 - $30.00).

C6.1.5. Fee Assessment

C6.1.5.1. Fees may not be used to discourage requesters, and to this end, FOIA fees are limited to standard charges for direct document search, review (in the case of commercial requesters) and duplication.

C6.1.5.2. In order to be as responsive as possible to FOIA requests while minimizing unwarranted costs to the taxpayer, Components shall adhere to the following procedures:

C6.1.5.2.1. Analyze each request to determine the category of the requester. If the Component determination regarding the category of the requester is different than that claimed by the requester, the Component shall:

C6.1.5.2.1.1. Notify the requester to provide additional justification to warrant the category claimed, and that a search for responsive records will not be initiated until agreement has been attained relative to the category of the requester. Absent further category justification from the requester, and within a reasonable period of time (i.e., 30 calendar days), the Component shall render a final category determination, and notify the requester of such determination, to include normal administrative appeal rights of the determination.

C6.1.5.2.1.2. Advise the requester that, notwithstanding any appeal, a search for responsive records will not be initiated until the requester indicates a willingness to pay assessable costs appropriate for the category determined by the Component.

C6.1.5.2.2. Requesters should submit a fee declaration appropriate for the below categories.

C6.1.5.2.2.1. <u>Commercial.</u> Requesters should indicate a willingness to pay all search, review and duplication costs.

C6.1.5.2.2.2. <u>Educational or Noncommercial Scientific Institution or News Media.</u> Requesters should indicate a willingness to pay duplication charges in excess of 100 pages if more than 100 pages of records are desired.

C6.1.5.2.2.3. <u>All Others.</u> Requesters should indicate a willingness to pay assessable search and duplication costs if more than two hours of search effort or 100 pages of records are desired.

C6.1.5.2.3. If the above conditions are not met, then the request need not be processed and the requester shall be so informed.

C6.1.5.2.4. In the situations described by subparagraphs C6.1.5.2.1. and C6.1.5.2.2., above, Components must be prepared to provide an estimate of assessable fees if desired by the requester. While it is recognized that search situations will vary among Components, and that an estimate is often difficult to obtain prior to an actual search, requesters who desire estimates are entitled to such before committing to a willingness to pay. Should

Components' actual costs exceed the amount of the estimate or the amount agreed to by the requester, the amount in excess of the estimate or the requester's agreed amount shall not be charged without the requester's agreement.

C6.1.5.2.5. No DoD Component may require advance payment of any fee; i.e., payment before work is commenced or continued on a request, unless the requester has previously failed to pay fees in a timely fashion, or the agency has determined that the fee will exceed $250.00. As used in this sense, a timely fashion is 30 calendar days from the date of billing (the fees have been assessed in writing) by the Component.

C6.1.5.2.6. Where a Component estimates or determines that allowable charges that a requester may be required to pay are likely to exceed $250.00, the Component shall notify the requester of the likely cost and obtain satisfactory assurance of full payment where the requester has a history of prompt payments, or require an advance payment of an amount up to the full estimated charges in the case of requesters with no history of payment.

C6.1.5.2.7. Where a requester has previously failed to pay a fee charged in a timely fashion (i.e., within 30 calendar days from the date of the billing), the Component may require the requester to pay the full amount owed, plus any applicable interest, or demonstrate that he or she has paid the fee, and to make an advance payment of the full amount of the estimated fee before the Component begins to process a new or pending request from the requester. Interest will be at the rate prescribed in 31 U.S.C. 3717 (reference (aj)), and confirmed with respective Finance and Accounting Offices.

C6.1.5.2.8. After all work is completed on a request, and the documents are ready for release, Components may request payment before forwarding the documents, particularly for those requesters who have no payment history, or for those requesters who have failed previously to pay a fee in a timely fashion (i.e., within 30 calendar days from the date of the billing). In the case of the latter, the previsions of subparagraph C6.1.5.2.7., above, apply.

C6.1.5.2.9. When Components act under subparagraphs C6.1.5.2.1. through C6.1.5.2.7, above, the administrative time limits of the FOIA will begin only after the Component has received a willingness to pay fees and satisfaction as to category determination, or fee payments (if appropriate).

C6.1.5.2.10. Components may charge for time spent searching for records, even if that search fails to locate records responsive to the request. Components may also charge search and review (in the case of commercial requesters) time if records located are determined to be exempt from disclosure. In practice, if the Component estimates that search charges are likely to exceed $25.00, it shall notify the requester of the estimated amount of fees, unless the requester has indicated in advance his or her willingness to pay fees as high as those

anticipated. Such a notice shall offer the requester the opportunity to confer with Component personnel with the object of reformulating the request to meet his or her needs at a lower cost.

C6.1.5.3. Commercial Requesters. Fees shall be limited to reasonable standard charges for document search, review and duplication when records are requested for commercial use. Requesters must reasonably describe the records sought. (See subsection C1.5.8. above.)

C6.1.5.3.1. The term "commercial use" request refers to a 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 requester or the person on whose behalf the request is made. In determining whether a requester properly belongs in this category, Components must determine the use to which a requester will put the documents requested. Moreover, where a Component has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, Components should seek additional clarification before assigning the request to a specific category.

C6.1.5.3.2. When Components receive a request for documents for commercial use, they should assess charges which recover the full direct costs of searching for, reviewing for release, and duplicating the records sought. Commercial requesters (unlike other requesters) are not entitled to two hours of free search time, nor 100 free pages of reproduction of documents. Moreover, commercial requesters are not normally entitled to a waiver or reduction of fees based upon an assertion that disclosure would be in the public interest. However, because use is the exclusive determining criteria, it is possible to envision a commercial enterprise making a request that is not for commercial use. It is also possible that a non-profit organization could make a request that is for commercial use. Such situations must be addressed on a case-by-case basis.

C6.1.5.4. Educational Institution Requesters. Fees shall be limited to only reasonable standard charges for document duplication (excluding charges for the first 100 pages) when the request is made by an educational institution whose purpose is scholarly research. Requesters must reasonably describe the records sought (see subsection C1.5.8. above). The term "educational institution" refers to a pre-school, a public or private elementary or secondary school, an institution of graduate high education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research. Fees shall be waived or reduced in the public interest if the criteria of subsection C6.1.4., above, have been met.

C6.1.5.5. Non-Commercial Scientific Institution Requesters. Fees shall be limited to only reasonable standard charges for document duplication (excluding charges for the first 100 pages) when the request is made by a non-commercial scientific institution whose purpose is scientific research. Requesters must reasonably describe the records sought (see subsection C1.5.8., above). The term "non-commercial scientific institution" refers to an institution that is

not operated on a "commercial" basis as defined in subparagraph C6.1.5.3.., above, and that is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry. Fees shall be waived or reduced in the public interest if the criteria of subsection C6.1.4., above, have been met.

C6.1.5.6. Components shall provide documents to requesters in paragraphs C6.1.5.4. and C6.1.5.5., above, for the cost of duplication alone, excluding charges for the first 100 pages. To be eligible for inclusion in these categories, requesters must show that the request is being made under the auspices of a qualifying institution and that the records are not sought for commercial use, but in furtherance of scholarly (from an educational institution) or scientific (from a non-commercial scientific institution) research.

C6.1.5.7. <u>Representatives of the news media.</u> Fees shall be limited to only reasonable standard charges for document duplication (excluding charges for the first 100 pages) when the request is made by a representative of the news media. Requesters must reasonably describe the records sought (see subsection C1.5.8., above). Fees shall be waived or reduced if the criteria of subsection C6.1.4., above, have been met.

C6.1.5.7.1. The term "representative of the news media" refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. 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), such alternative media would be included in this category. In the case of "freelance" journalists, they may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication though that organization, even through not actually employed by it. A publication contract would be the clearest proof, but Components may also look to the past publication record of a requester in making this determination.

C6.1.5.7.2. To be eligible for inclusion in this category, a requester must meet the criteria in subparagraph C6.1.5.7.1., above, and his or her request must not be made for commercial use. A request for records supporting the news dissemination function of the requester shall not be considered to be a request that is for a commercial use. For example, a document request by a newspaper for records relating to the investigation of a defendant in a current criminal trial of public interest could be presumed to be a request from an entity eligible for inclusion in this category, and entitled to records at the cost of reproduction alone (excluding charges for the first 100 pages).

C6.1.5.7.3. "Representative of the news media" does 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*.

C6.1.5.8. <u>All Other Requesters.</u> Components shall charge requesters who do not fit into any of the categories described in subsections C6.1.5.3.., C6.1.5.4., C6.1.5.5., or C6.1.5.7., fees which recover the full direct cost of searching for and duplicating records, except that the first two hours of search time and the first 100 pages of duplication shall be furnished without charge. Requesters must reasonably describe the records sought (see subsection C1.5.8., above). Requests from subjects about themselves will continue to be treated under the fee provisions of the Privacy Act of 1974 (reference (d)), which permit fees only for duplication. Components are reminded that this category of requester may also be eligible for a waiver or reduction of fees if disclosure of the information is in the public interest as defined under subsection C6.1.4.1., above. (See also subparagraph C6.1.5.3.2.)

C6.1.6. <u>Aggregating Requests</u>. Except for requests that are for a commercial use, a Component may not charge for the first two hours of search time or for the first 100 pages of reproduction. However, a requester may not file multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment of fees. When a Component reasonably believes that a requester or, on rare occasions, a group of requesters acting in concert, is attempting to break a request down into a series of requests for the purpose of avoiding the assessment of fees, the Agency may aggregate any such requests and charge accordingly. One element to be considered in determining whether a belief would be reasonable is the time period in which the requests have occurred. For example, it would be reasonable to presume that multiple requests of this type made within a 30 day period had been made to avoid fees. For requests made over a longer period however, such a presumption becomes harder to sustain and Components should have a solid basis for determining that aggregation is warranted in such cases. Components are cautioned that before aggregating requests from more than one requester, they must have a concrete basis on which to conclude that the requesters are acting in concert and are acting specifically to avoid payment of fees. In no case may Components aggregate multiple requests on unrelated subjects from one requester.

C6.1.7 <u>Effect of the Debt Collection Act of 1982 (P.L. 97-365)</u> (reference (ak)). The Debt Collection Act of 1982 (P.L. 97-365) (reference (ak)) provides for a minimum annual rate of interest to be charged on overdue debts owed the Federal Government. 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 requester of the amount owed. The interest rate shall be as prescribed in 31 U.S.C. 3717 (reference (aj)). Components should verify the current interest rate with respective Finance and Accounting Offices. After one demand letter has been sent, and 30 calendar days have lapsed with no payment, Components may submit the debt to respective Finance and Accounting Offices for collection pursuant to reference (ak).

C6.1.8. Computation of Fees. The fee schedule in this Chapter shall be used to compute the search, review (in the case of commercial requesters) and duplication costs associated with processing a given FOIA request. costs shall be computed on time actually spent. Neither time-based nor dollar-based minimum charges for search, review and duplication are authorized. ***The appropriate fee category of the requester shall be applied before computing fees.***

C6.1.9. Refunds. In the event that a Component discovers that it has overcharged a requester or a requester has overpaid, the Component shall promptly refund the charge to the requester by reimbursement methods that are agreeable to the requester and the Component.

C6.2. COLLECTION OF FEES AND FEE RATES

C6.2.1. Collection of Fees. Collection of fees will be made at the time of providing the documents to the requester or recipient when the requester specifically states that the costs involved shall be acceptable or acceptable up to a specified limit that covers the anticipated costs. Collection of fees may not be made in advance unless the requester has failed to pay previously assessed fees within 30 calendar days from the date of the billing by the DoD Component, or the Component has determined that the fee will be in excess of $250 (see subsection C6.1.5., above).

C6.2.2. Search Time.

C6.2.2.1. Manual Search

Type	Grade	Hourly Rate ($)
Clerical	E9/GS8 and below	12
Professional	O1-O6/GS9-GS15	25
Executive	O7/GS16/ES1 and above	45

C6.2.2.2. Computer Search. Fee assessments for computer search consists of two parts; individual time (hereafter referred to as human time), and machine time.

C6.2.2.2.1. Human time. Human time is all the time spent by humans performing the necessary tasks to prepare the job for a machine to execute the run command. If execution of a run requires monitoring by a human, that human time may be also assessed as computer search. The terms "programmer/operator" shall not be limited to the traditional programmers or operators. Rather, the terms shall be interpreted in their broadest sense to incorporate any human involved in performing the computer job (e.g. technician, administrative support, operator, programmer, database administrator, or action officer).

C6.2.2.2.2. Machine time. Machine time involves only direct costs of the Central Processing Unit (CPU), input/output devices, and memory capacity used in the actual computer configuration. Only this CPU rate shall be charged. No other machine related costs shall be charged. In situations where the capability does not exist to calculate CPU time, no machine costs can be passed on to the requester. When CPU calculations are not available, only human time costs shall be assessed to requesters. Should DoD Components lease computers, the services charged by the lessor shall not be passed to the requester under the FOIA.

C6.2.3. Duplication

Type	Cost per Page (cents)
Pre-Printed material	02
Office copy	15
Microfiche	25
Computer copies(tapes, discs or printouts)	Actual cost of duplicating the tape, disc or printout (includes operator's time and cost of the medium)

C6.2.4. Review Time (in the case of commercial requesters)

Type	Grade	Hourly Rate ($)
Clerical	E9/GS8 and below	12
Professional	O1-O6/GS9-GS15	25
Executive	O7/GS16/ES1 and above	45

C6.2.5. Audiovisual Documentary Materials. Search costs are computed as for any other record. Duplication cost is the actual direct cost of reproducing the material, including the wage of the person doing the work. Audiovisual materials provided to a requester need not be in reproducible format or quality.

C6.2.6. Other Records. Direct search and duplication cost for any record not described in this section shall be computed in the manner described for audiovisual documentary material.

C6.2.7. Costs for Special Services. Complying with requests for special services is at the discretion of the Components. Neither the FOIA, nor its fee structure cover these kinds of

services. Therefore, Components may recover the costs of special services requested by the requester after agreement has been obtained in writing from the requester to pay for one or more of the following services:

C6.2.7.1. Certifying that records are true copies.

C6.2.7.2. Sending records by special methods such as express mail, etc.

C6.3. COLLECTION OF FEES AND FEE RATES FOR TECHNICAL DATA

C6.3.1. Fees for Technical Data

C6.3.1.1. Technical data, other than technical data that discloses critical technology with military or space application, if required to be released under the FOIA, shall be released after the person requesting such technical data pays all reasonable costs attributed to search, duplication and review of the records to be released. Technical data, as used in this section, means recorded information, regardless of the form or method of the recording of a scientific or technical nature (including computer software documentation). This term does not include computer software, or data incidental to contract administration, such as financial and/or management information. DoD Components shall retain the amounts received by such a release, and it shall be merged with and available for the same purpose and the same time period as the appropriation from which the costs were incurred in complying with request. All reasonable costs as used in this sense are the full costs to the Federal Government of rendering the service, or fair market value of the service, whichever is higher. Fair market value shall be determined in accordance with commercial rates in the local geographical area. In the absence of a known market value, charges shall be based on recovery of full costs to the Federal Government. The full costs shall include all direct and indirect costs to conduct the search and to duplicate the records responsive to the request. This cost is to be differentiated from the direct costs allowable under section C6.2. of this chapter for other types of information released under the FOIA.

C6.3.1.2. Waiver. Components shall waive the payment of costs required in paragraph C6.3.1.1., above, which are greater than the costs that would be required for release of this same information under section C6.2. of this chapter if:

C6.3.1.2.1. The request is made by a citizen of the United States or a United States corporation, and such citizen or corporation certifies that the technical data requested is required to enable it to submit an offer, or 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 contractor with the United States. However, 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 request, which will be refunded upon submission of an offer by the citizen or corporation;

C6.3.1.2.2. The release of technical data is requested in order to comply with the terms of an international agreement; or,

C6.3.1.2.3. The Component determines in accordance with paragraph C6.1.4.1., above, that such a waiver is in the interest of the United States.

C6.3.1.3. Fee Rates

C6.3.1.3.1. Search Time

C6.3.1.3.1.1. Manual Search

Type	Grade	Hourly Rate ($)
Clerical	E9/GS8 and below	13.25
(Minimum Charge)		8.30
Professional and Executive (To be established at actual hourly rate prior to search. A minimum charge will be established at 1/2 hourly rates).		

C6.3.1.3.1.2. Computer search is based on the total cost of the central processing unit, input-output devices, and memory capacity of the actual computer configuration. The wage (based upon the scale in subparagraph C6.3.1.3.1.1., above) for the computer operator and/or programmer determining how to conduct, and subsequently executing the search will be recorded as part of the computer search. See paragraph C6.2.2.2., above, for further details regarding computer search.

C6.3.1.3.2. Duplication

Type	Cost
Aerial photograph, maps, specifications, permits, charts, blueprints, and other technical engineering documents	$2.50

Engineering data (microfilm)

(a) Aperture cards

1 Silver duplicate negative, per card	**.75**
When key punched and verified, per card	**.85**
2 Diazo duplicate negative, per card	**.65**
When key punched and verified, per card	**.75**
(b) 35mm roll film, per frame	**.50**
(c) 16mm roll film, per frame	**.45**
(d) Paper prints (engineering drawings), each	**1.50**
(e) Paper reprints of microfilm indices, each	**.10**

C6.3.1.3.3. Review Time

Type	Grade	Hourly Rate ($)
Clerical	E9/GS8 and below	13.25
(Minimum Charge)		8.30

Professional and Executive (To be established at actual hourly rate prior to review. A minimum charge will be established at 1/2 hourly rates).

C6.3.1.4. Other Technical Data Records. Charges for any additional services not specifically provided in subsection C6.3.1.3., above, consistent with Volume 11A of DoD 7000.14-R (reference (ai)), shall be made by Components at the following rates:

(1) Minimum charge for office copy (up to six images) $3.50
. .

(2) Each additional image 10
.

(3) Each typewritten page 3.50
.

(4) Certification and validation with seal, each 5.20
. . .

(5) Hand-drawn plots and sketches, each hour or fraction thereof 12.00

C7. CHAPTER 7

REPORTS

C7.1. REPORTS CONTROL

C7.1.1. General.

C7.1.1.1. ***The Annual Freedom of Information Act Report is mandated by the statute and reported on a fiscal year basis. Due to the magnitude of the requested statistics and the need to ensure accuracy of reporting, DoD Components shall track this data as requests are processed. This will also facilitate a quick and accurate compilation of statistics. DoD Components shall forward their report to the Directorate for Freedom of Information and Security Review no later than November 30 following the fiscal year's close. It may be submitted electronically and via hard copy accompanied by a computer diskette. In turn, DoD will produce a consolidated report for submission to the Attorney General, and ensure that a copy of the DoD consolidated report is placed on the Internet for public access.***

C7.1.1.1. (AF) MAJCOM FOIA managers and AFLSA/JACL send a consolidated report for the fiscal year on DD Form 2564, **Annual Report Freedom of Information Act,** to HQ AFCIC/ITC by 30 October via regular mail, e-mail, or facsimile. AFLSA/JACL will prepare the appeals and litigation costs sections of the report. HQ AFCIC/ITC will make the Air Force report available on the WWW.

C7.1.1.1. (AFSPC) Submit report using DD Form 2564**, Annual Report – Freedom of Information Act**, to arrive at HQ AFSPC/SCMI (FOIA), 150 Vandenberg St., Ste 1105, Peterson AFB CO 80914-4400, by 15 October each year.

C7.1.1.2. Existing DoD standards and registered data elements are to be utilized to the greatest extent possible in accordance with the provisions of DoD Manual 8320.1-M, "Data Administration Procedures" (reference (al)).

C7.1.1.3. The reporting requirement outlined in this Chapter is assigned Report Control Symbol ***DD-DA&M(A)1365, Freedom of Information Act Report to Congress.***

C7.1.2. Annual Report. The current edition of DD Form 2564 ***shall*** **be used to submit component input.** ***DD Form 2564 is available on the Internet under DefenseLink, Publications.*** **Instructions for completion follow:**

C7.1.2.1. <u>ITEM 1</u> <u>Initial Request Determinations</u>. ***Please note that initial Privacy Act requests which are also processed as initial FOIA requests are reported here. They will also be reported as "Privacy Act requests" on the Annual Privacy Act Report. See paragraph C1.5.13., Relationship Between the FOIA and the Privacy Act (PA).***

C7.1.2.1.1. <u>Total Requests Processed</u>. Enter the total number of initial FOIA requests responded to (completed) during the fiscal year. Since more than one action frequently is taken on a completed case, Total Actions (see C7.1.2.1.6., below) the sum of Items C7.1.2.1.2. (below) through C7.1.2.1.5. (below), may exceed Total Requests Processed (See Appendix AP5 for form layout).

C7.1.2.1.1. (AF) "Processed" includes responses that give an estimated cost for providing the records, even if the requester has not paid.

C7.1.2.1.2. <u>Granted in Full</u>. Enter the total number of initial FOIA requests responded to that were granted in full during the fiscal year. (This may include requests granted by your office, yet still requiring action by another office.)

C7.1.2.1.3. <u>Denied in Part</u>. Enter the total number of initial FOIA requests responded to and denied in part based on one or more of the FOIA exemptions. ***(Do not report "Other Reason Responses" as a partial denial here, unless a FOIA exemption is used also.)***

C7.1.2.1.4. <u>Denied in Full</u>. Enter the total number of initial FOIA requests responded to and denied in full based on one or more of the FOIA exemptions. ***(Do not report "Other Reason Responses" as denials here, unless a FOIA exemption is used also.)***

C7.1.2.1.4. (AF) Do not report "no record" responses as denials.

C7.1.2.1.5. <u>"Other Reason" Responses</u>. Enter the total number of initial FOIA requests in which you were unable to provide all or part of the requested information based on an "Other Reason" response. C7.1.2.2.2. below, explains the *nine* possible "Other Reasons."

C7.1.2.1.6. <u>Total Actions</u>. Enter the total number of FOIA actions taken during the fiscal year. This number will be the sum of C7.1.2.1.2. through C7.1.2.1.5., above. Total Actions must be equal to or greater than the number of Total Requests Processed (C7.1.2.1.1., above).

C7.1.2.2. <u>ITEM 2</u> <u>Initial Request Exemptions and Other Reasons</u>

C7.1.2.2.1. Exemptions Invoked on Initial REQUEST Determinations. Enter the number of times an exemption was claimed for each request that was denied in full or in part. Since more than one exemption may be claimed when responding to a single request, this number will be equal to or greater than the sum of C7.1.2.1.3. and C7.1.2.1.4., above. ***The (b)(7) exemption is reported by subcategories (A) through (F): (A) INTERFERE WITH ENFORCEMENT; (B) FAIR TRIAL RIGHT; (C) INVASION OF PRIVACY; (D) PROTECT CONFIDENTIAL SOURCE; (E) DISCLOSE TECHNIQUES; and (F) ENDANGER LIFE OR SAFETY.***

C7.1.2.2.2. "Other Reasons" Cited on Initial Determinations. Identify the "Other Reason" response cited when responding to a FOIA request and enter the number of times each was claimed.

C7.1.2.2.2.1. ***No Records*****. Enter the number of times a** ***reasonable*** **search of files failed to identify records responsive to subject request.**

C7.1.2.2.2.2. ***Referrals. Enter the number of times a request was referred to another DoD Component or Federal Agency for action.***

C7.1.2.2.2.2. (AF) Also include referrals within Air Force in this category.

C7.1.2.2.2.3. Request Withdrawn. Enter the number of times a request and/or appeal was withdrawn by a requester. [For appeals, report number in Item 4b on the report form (see Appendix AP5).]

C7.1.2.2.2.4. ***Fee-Related Reason. Requester is unwilling to pay the fees associated with a request; the requester is past due in the payment of fees from a previous FOIA request; or the requester disagrees with a fee estimate.***

C7.1.2.2.2.5. ***Records not Reasonably Described*****. Enter the number of times a FOIA request could not be acted upon since the** ***record had not been described with sufficient particularity to enable the DoD Component to locate it by conducting a reasonable search.***

C7.1.2.2.2.6. ***Not a Proper FOIA Request for Some Other Reason. Enter the number of times the requester has failed unreasonably to comply with procedural requirements, other than fee-related (described in C7.1.2.2.2.4., above), imposed by this Regulation or a DoD Component's supplementing regulation.***

C7.1.2.2.2.7. <u>Not an Agency Record</u>. Enter the number of times a requester was provided a response indicating the requested information was not *a record within the meaning of the FOIA and this Regulation.*

C7.1.2.2.2.7. (AF) The "not an agency record" other reason category only applies to requests for: (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; and (3) personal records 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. This category does not include "no record" responses.

C7.1.2.2.2.8. *<u>Duplicate Request</u>*. *Record number of duplicate requests closed for that reason (e.g., request for the same information by the same requester). This includes identical requests received via different means (e.g., electronic mail, facsimile, mail, courier) at the same or different times.*

C7.1.2.2.2.9. *<u>Other (Specify)</u>*. Any other *reason a requester does not comply with published rules, other than those reasons outlined in C7.1.2.2.2.1. through C7.1.2.2.2.8, above.*

C7.1.2.2.2.9. (AF) The "Other (Specify)" block must contain the reason with the total number for the reason. For example: "FOIA request had no return address - 4."

C7.1.2.2.2.10. <u>Total</u>. Enter the sum of C7.1.2.2.2.1. through C7.1.2.2.2.9. above, in the block provided on the form. This number will be equal to or greater than the number in C7.1.2.1.5. (above) since more than one reason may be claimed for each "Other Reason" response.

C7.1.2.2.3. <u>(b)(3) Statutes Invoked on Initial Determinations</u>. Identify the number of times you have used a specific statute to support each (b)(3) exemption. List the statutes used to support each (b)(3) exemption; the number of instances in which the statute was cited; note whether or not the statute has been upheld in a court hearing; and provide a concise description of the material withheld in each individual case by the statute's use. Ensure you cite the specific sections of the acts invoked. The total number of instances reported will be equal to or greater than the total number of (b)(3) exemptions listed in Item 2a on the report form.

C7.1.2.2.3. (AF) A corresponding statute is required for each instance entered in the Exemption 3 block . List the statute by number, not title. For any statute on the report that is not on DoD's list of commonly used (b)(3) statutes, attach a copy of the pertinent page of the statute that states information must be withheld from public disclosure. HQ AFCIC/ITC makes the DoD list available to FOIA managers electronically. Statutes on the DoD list with an asterisk indicate they are valid (b)(3) statutes from litigation. Do not enter any of the following as (b)(3) statutes:

5 U.S.C. 552

5 U.S.C. 552a

28 U.S.C. 1498

17 U.S.C. 101

18 U.S.C. 1905

C7.1.2.3. <u>ITEM 3</u> <u>Appeal Determinations</u>. ***Please note that Privacy Act appeals which are also processed as FOIA appeals are reported here. They will also be reported as "Privacy Act appeals" on the Annual Privacy Act Report. See paragraph C1.5.13., Relationship Between the FOIA and the Privacy Act (PA).***

C7.1.2.3. (AF) Enter the total number of FOIA appeals received and total number of FOIA appeals completed during the fiscal year.

C7.1.2.3.1. <u>Total Appeal Responses</u>. Enter the total number of FOIA appeals responded to (completed) during the fiscal year.

C7.1.2.3.2. <u>Granted in Full</u>. Enter the total number of FOIA appeals responded to and granted in full during the year.

C7.1.2.3.3. <u>Denied in Part</u>. Enter the total number of FOIA appeals responded to and denied in part based on one or more of the FOIA exemptions. ***(Do not report "Other Reason Responses" as a partial denial here, unless a FOIA exemption is used also.)***

C7.1.2.3.4. <u>Denied in Full</u>. Enter the total number of FOIA appeals responded to and denied in full based on one or more of the FOIA exemptions. ***(Do not report "Other Reason Responses" as denials here, unless a FOIA exemption is used also.)***

C7.1.2.3.5. <u>"Other Reason" Responses</u>. Enter the total number of FOIA appeals in which you were unable to provide the requested information based on an "Other Reason" response ***(as outlined in "Other Reasons" in C7.1.2.2.2., above).***

C7.1.2.3.6. Total Actions. Enter the total number of FOIA appeal actions taken during the fiscal year. This number will be the sum of C7.1.2.3.2. through C7.1.2.3.5., above, and should be equal to or greater than the number of Total Appeal Responses, C7.1.2.3.1., above.

C7.1.2.4. ITEM 4 Appeal Exemptions and Other Reasons

C7.1.2.4.1. Exemptions Invoked on Appeal Determinations. Enter the number of times an exemption was claimed for each appeal that was denied in full or in part. Since more than one exemption may be claimed when responding to a single request, this number will be equal to or greater than the sum of C7.1.2.3.3. and C7.1.2.3.4. ***Note that the (b)(7) exemption is reported by subcategory (A) through (F): (A) INTERFERE WITH ENFORCEMENT; (B) FAIR TRIAL RIGHT; (C) INVASION OF PRIVACY; (D) PROTECT CONFIDENTIAL SOURCE; (E) DISCLOSE TECHNIQUES; and (F) ENDANGER LIFE OR SAFETY.***

C7.1.2.4.2. "Other Reasons" Cited on Appeal Determinations. Identify the "Other Reason" response cited when responding to a FOIA appeal and enter the number of times each was claimed. See C7.1.2.2.2. above for description of "Other Reasons." This number may be equal to or possibly greater than the number in C7.1.2.3.5., above, since more than one reason may be claimed for each "Other Reason" response.

C7.1.2.4.3. ***(b)(3) Statutes Invoked on Appeal Determinations. Identify the number of times a specific statute has been used to support each (b)(3) exemption identified in item 4a on the report form (Appendix AP5). List the statutes used to support each (b)(3) exemption; the number of instances in which the statute was cited; note whether or not the statute has been upheld in a court hearing; and provide a concise description of the material withheld in each individual case by the statute's use. Ensure citation to the specific sections of the statute invoked. The total number of instances reported will be equal to or greater than the total number of (b)(3) exemptions listed in Item 4a on the report form.***

C7.1.2.5. ITEM 5 Number and Median Age of Initial Cases Pending:

C7.1.2.5.1. ***Total Initial Cases Pending:***

C7.1.2.5.1.1. ***Beginning and Ending Report Period: Midnight, 2400 hours, September 30 of the Preceding Year -OR- 0001 hours, October 1 is the beginning of the report period. Midnight, 2400 hours, is the close of the reporting period.***

C7.1.2.5.2. ***Median Age of Initial Requests Pending*****:** ***Report the median age in days (including holidays and weekends) of initial requests pending.***

C7.1.2.5.3. Examples of Median Calculation.

C7.1.2.5.3.1. If given five cases aged 10, 25, 35, 65, and 100 days from date of receipt as of the previous September 30th, the total requests pending is five (5). The median age (days) of open requests is the middle, not average value, in this set of numbers (10, 25, 35, 65, and 100), 35 (the middle value in the set).

C7.1.2.5.3.2. If given six pending cases, aged 10, 20, 30, 50, 120, and 200 days from date of receipt, as of the previous September 30th, the total requests pending is six (6). The median age (days) of open requests 40 days (the mean [average] of the two middle numbers in the set, in this case the average of middle values 30 and 50).

C7.1.2.5.4. ***Accuracy of Calculations*****.** ***Components must ensure the accuracy of calculations. As backup, the raw data used to perform calculations should be recorded and preserved. This will enable recalculation of median [and mean values] as necessary. Components may require subordinate elements to forward raw data, as deemed necessary and appropriate.***

C7.1.2.5.5. ***Average*****.** ***If a Component believes that "average" (mean) processing time is a better measure of performance, then report "averages" (means) as well as median values (e.g., with data reflected and plainly labeled on plain bond as an attachment to the report). However, "average" (mean) values will not be included in the consolidated DoD report unless all Components report it.***

C7.1.2.5.5. (AF) Air Force will use the "median age" and will not collect or report averages.

C7.1.2.6. ITEM 6 Number of Initial Requests Received During the Fiscal Year. Enter the total number of initial FOIA requests received during the reporting period (fiscal year being reported).

C7.1.2.6. (AF) This number includes open and closed cases.

C7.1.2.7. ITEM 7 Types of Requests Processed and Median Age. Information is reported for three types of initial requests completed during the reporting period: Simple; Complex; and Expedited Processing. The following items of information are reported for these requests:

C7.1.2.7.1. <u>Total Number of Initial Requests</u>. Enter the total number of initial requests processed [completed] during the reporting period (fiscal year) by type (Simple, Complex and Expedited Processing) in the appropriate row on the form.

C7.1.2.7.1. (AF) "Processed" includes responses which give an estimated cost for providing the records, even if the requester has not paid.

C7.1.2.7.2. <u>Median Age (Days)</u>. Enter the median number of days [calendar days including holidays and weekends] required to process each type of case (Simple, Complex and Expedited Processing) during the period in the appropriate row on the form.

C7.1.2.7.3. <u>Example</u>. Given seven Initial Requests, Multitrack -- Simple completed during the fiscal year, aged 10, 25, 35, 65, 79, 90 and 400 days when completed. The total number of requests completed was seven (7). The median age (days) of completed requests is 65, the middle value in the set.

C7.1.2.8. <u>ITEM 8</u> <u>Fees Collected from the Public</u>. Enter the total amount of fees collected from the public during the fiscal year. This includes search, review and reproduction costs only.

C7.1.2.9. *<u>ITEM 9</u>* *<u>FOIA Program Costs</u>*.

C7.1.2.9.1. *<u>Number of Full Time Staff</u>: Enter the number of personnel your agency had dedicated to working FOIA full time during the fiscal year. This will be expressed in work-years [manyears]. For example: "5.1, 3.2, 1.0, 6.5, et al." A sample calculation follows:*

Employee	*Number Months Worked*	*Work-Years*	*Note*
SMITH, Jane	*6*	*.5*	*Hired full time at middle of fiscal year.*
PUBLIC, John Q.	*4*	*.34*	*Dedicated to full time FOIA processing last quarter of fiscal year.*
BROWN, Tom	*12*	*1.0*	*Worked FOIA full time all fiscal year.*
TOTAL:	*22*	*1.84 work-years*	

C7.1.2.9.2. ***Number of Part Time Staff*****:** ***Enter the number of personnel your agency had dedicated to working FOIA part time during the fiscal year. This will be expressed in work-years [manyears]. For example: "5.1, 3.2, 1.0, 6.5, et al." A sample calculation follows:***

Employee	*Number Hours Worked*	*Work-Years*	*Note*
PUBLIC, John Q.	*200*	*.1*	*Amount of time devoted to part time FOIA processing before becoming full time FOIA processor in previous example.*
WHITE, Sally	*400*	*.2*	*Processed FOIA's part time while working as paralegal in General Counsel's Office.*
PETERS, Ron	*1,000*	*.5*	*Part time employee dedicated to FOIA processing.*
TOTAL:	*1,600/2,000 hours (hours worked in a year) equals 0.8 work-years.*		

C7.1.2.9.3. ***Estimated Litigation Cost:*** ***Report your best estimate of litigation costs for the FY. Include all direct and indirect expenses associated with FOIA litigation in U.S. District Courts, U.S. Circuit Courts of Appeals, and the U.S. Supreme Court.***

C7.1.2.9.4. ***Total Program Cost*****:** ***Report the total cost of FOIA program operation within your agency. Include your litigation costs in this total. While you do not have to report detailed cost information as in the past, you should be able to explain the technique by which you derived your agency's total cost figures if the need arises.***

C7.1.2.9.4. (AF) This figure includes all costs from the DD Forms 2086 and 2086-1, as well as personnel costs for individuals primarily involved in administering the FOIA program. To figure personnel costs, multiply the annual salary of each person by the percentage of time spent on FOIA.

C7.1.2.9.4.1. Before the close of each fiscal year, the Directorate for Freedom of Information and Security Review (DFOISR) will dispatch the latest OSD Composite Rate Chart for military personnel to DoD Components. This information may be used in computing military personnel costs.

C7.1.2.9.4.2. DoD Components should compute their civilian personnel costs using rates from local Office of Personnel Management (OPM) Salary Tables and shall add 16% for benefits.

C7.1.2.9.4.3. Data captured on DD Form 2086, Record of Freedom of Information (FOI) Processing Cost and DD Form 2086-1, Record of Freedom of Information (FOI) Processing Cost for Technical Data, shall be summarized and used in computing total costs.

C7.1.2.9.4.4. An overhead rate of 25% shall be added to all calculated costs for supervision, space, and administrative support.

C7.1.2.9.4.4. (AF) MAJCOMs and bases do not include the 25 percent. HQ AFCIC/ITC will add to the final Air Force report to DoD.

C7.1.2.10. <u>ITEM 10</u> <u>AUTHENTICATION</u>: The official that approves the agency's report submission to DoD will sign and date; enter typed name and duty title; and provide the both the agency's name and phone number for questions about the report.

C7.1.2.10.1. (Added)(AF) MAJCOM SCs will sign as approving official (or two-letter functional equivalent for FOIA offices in other functional areas).

C7.1.3. <u>Electronic Publication</u>. The consolidated DoD Annual FOIA Program Report will be made available to the public in either paper or electronic format.

C8. CHAPTER 8

EDUCATION AND TRAINING

C8.1. RESPONSIBILITY AND PURPOSE

C8.1.1. Responsibility. The Head of each DoD Component is responsible for the establishment of educational and training programs on the provisions and requirements of this Regulation. The educational programs should be targeted toward all members of the DoD Component, developing a general understanding and appreciation of the DoD FOIA Program; whereas, the training programs should be focused toward those personnel who are involved in the day-to-day processing of FOIA requests, and should provide a thorough understanding of the procedures outlined in this Regulation.

C8.1.2. Purpose. The purpose of the 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, thereby improving the interaction with members of the public and improving the public trust in the DoD.

C8.1.3. Scope and Principles. Each Component shall design its FOIA educational and training programs to fit the particular requirements of personnel dependent upon their degree of involvement in the implementation of this Regulation. The program should be designed to accomplish the following objectives:

C8.1.3.1. Familiarize personnel with the requirements of the FOIA and its implementation by this Regulation.

C8.1.3.2. Instruct personnel, who act in FOIA matters, concerning the provisions of this Regulation, advising them of the legal hazards involved and the strict prohibition against arbitrary and capricious withholding of information.

C8.1.3.3. Provide for the procedural and legal guidance and instruction, as may be required, in the discharge of the responsibilities of initial denial and appellate authorities.

C8.1.3.4. Advise personnel of the penalties for noncompliance with the FOIA.

C8.1.4. Implementation. To ensure uniformity of interpretation, all major educational and training programs concerning the implementation of this Regulation should be coordinated with the Director, Freedom of Information and Security Review.

C8.1.5. <u>Uniformity of Legal Interpretation</u>. In accordance with DoD Directive 5400.7 (reference (b)), the DoD Office of the General Counsel shall ensure uniformity in the legal position and interpretation of the DoD FOIA Program.

C8.1.6. (Added)(AFSPC) Forms Prescribed:

C8.1.6.1. (AFSPC) AFSPC Form 58**, Freedom of Information (FOI) Transmittal Sheet.**

AP1. APPENDIX 1

COMBATANT COMMANDS - PROCESSING PROCEDURES FOR FOIA APPEALS

AP1.1. General

AP1.1.1. In accordance with DoD Directive 5400.7 (reference (b)) and this Regulation, the Combatant Commands are placed under the jurisdiction of the Office of the Secretary of Defense, instead of the administering Military Department, only for the purpose of administering the Freedom of Information Act (FOIA) Program. This policy represents an exception to the policies in DoD Directive 5100.3 (reference (e)).

AP1.1.2. The policy change in AP1.1.1., above, authorizes and requires the Combatant Commands to process FOIA requests in accordance with reference (b) and DoD Instruction 5400.10 (reference (am)) and to forward directly to the Director, Freedom of Information and Security Review, all correspondence associated with the appeal of an initial denial for information under the provisions of the FOIA.

AP1.2. Responsibilities of Commands. Combatant Commanders in Chief shall:

AP1.2.1. Designate the officials authorized to deny initial FOIA requests for records.

AP1.2.2. Designate an office as the point-of-contact for FOIA matters.

AP1.2.3. Refer FOIA cases to the Director, Freedom of Information and Security Review, for review and evaluation when the issues raised are of unusual significance, precedent setting, or otherwise require special attention or guidance.

AP1.2.4. Consult with other OSD and DoD Components that may have a significant interest in the requested record prior to a final determination. Coordination with Agencies outside of the Department of Defense, if required, is authorized.

AP1.2.5. Coordinate proposed denials of records with the appropriate Combatant Command's Office of the Staff Judge Advocate.

AP1.2.6. Answer any request for a record within 20 working days of receipt. The requester shall be notified that his request has been granted or denied. In unusual circumstances,

such notification may state that additional time, not to exceed 10 working days, is required to make a determination.

AP1.2.7. Provide to the Director, Freedom of Information and Security Review when the request for a record is denied in whole or in part, a copy of the response to the requester or the requester's representative, and any internal memoranda that provide background information or rationale for the denial.

AP1.2.8. State in the response that the decision to deny the release of the requested information, in whole or in part, may be appealed to the *Director, Administration and Management and Washington Headquarters Services,* Directorate for Freedom of Information and Security Review, Room 2C757, *1155 Defense Pentagon,* Washington, DC *20301-1155.*

AP1.2.9. Upon request, submit to *Director, Administration and Management and Washington Headquarters Services* a copy of the records that were denied. The *Director, Administration and Management and Washington Headquarters Services* shall make such requests when adjudicating appeals.

AP1.3. <u>Fees for FOIA Requests.</u> The fees charged for requested records shall be in accordance with Chapter 6, above.

AP1.4. <u>Communications.</u> Excellent communication capabilities currently exist between the Director, Freedom of Information and Security Review and the *Freedom of Information Act Offices of the* Combatant Commands. This communication capability shall be used for FOIA cases that are time sensitive.

AP1.5. <u>Information Requirements</u>

AP1.5.1. The Combatant Commands shall submit to the Director, Freedom of Information and Security Review, an annual report. The instructions for the report are outlined in Chapter 7, above.

AP1.5.2. The annual reporting requirement contained in this regulation shall be submitted in duplicate to the Director, Freedom of Information and Security Review not later than each November 30. This reporting requirement has been assigned Report Control Symbol *DD-DA&M(A) 1365* in accordance with DoD 8910.1-M (reference (an)).

AP2. APPENDIX 2

ADDRESSING FOIA REQUESTS

AP2.1. General

AP2.1.1. The Department of Defense includes the Office of the Secretary of Defense, the Chairman of the Joint Chiefs of Staff, the Military Departments, the Combatant Commands, the Inspector General, the Defense Agencies, and the DoD Field Activities.

AP2.1.2. The Department of Defense does not have a central repository for DoD records. FOIA requests, therefore, should be addressed to the DoD Component that has custody of the record desired. In answering inquiries regarding FOIA requests, DoD personnel shall assist requesters in determining the correct DoD Component to address their requests. If there is uncertainty as to the ownership of the record desired, the requester shall be referred to the DoD Component that is most likely to have the record.

AP2.2. Listing of DOD Component Addresses for FOIA Requests

AP2.2.1. Office of the Secretary of Defense and the Chairman of the Joint Chiefs of Staff. Send all requests for records from the below listed offices to: Directorate for Freedom of Information and Security Review, Room 2C757, *1155 Defense Pentagon, Washington, DC 20301-1155.*

Executive Secretariat

Under Secretary of Defense (Policy)

- **Assistant Secretary of Defense (International Security Affairs)**
- **Assistant Secretary of Defense (Special Operations & Low Intensity Conflict)**
- **Assistant Secretary of Defense (Strategy &Threat Reduction)**
- **Deputy to the Under Secretary of Defense (Policy Support)**
- **Director of Net Assessment**
- **Defense Security Assistance Agency**
- **Defense Technology Security Administration**

Under Secretary of Defense (Acquisition & Technology)

- **Deputy Under Secretary of Defense (Logistics)**
- **Deputy Under Secretary of Defense (Advanced Technology)**

Deputy Under Secretary of Defense (Acquisition Reform)

Deputy Under Secretary of Defense (Environmental Security)

Deputy Under Secretary of Defense (International & Commercial Programs)

Deputy Under Secretary of Defense (Industrial Affairs & Installations)

Assistant to the Secretary of Defense (Nuclear, Chemical & Biological Defense Programs)

Director, Defense Research & Engineering

Director, Small & Disadvantaged Business Utilization

Director, Defense Procurement

Director, Test Systems Engineering & Evaluation

Director, Strategic & Tactical Systems

DoD Radiation Experiments Command Center

On-Site Inspection Agency

Under Secretary of Defense (Comptroller)

Director, Program Analysis and Evaluation

Under Secretary of Defense (Personnel & Readiness)

Assistant Secretary of Defense (Health Affairs)

Assistant Secretary of Defense (Legislative Affairs)

Assistant Secretary of Defense (Public Affairs)

Assistant Secretary of Defense (Command, Control, Communications & Intelligence)

Assistant Secretary of Defense (Reserve Affairs)

General Counsel, Department of Defense

Director, Operational Test and Evaluation

Assistant to the Secretary of Defense (Intelligence Oversight)

Director, Administration and Management

Special Assistant for Gulf War Illness

Defense Advanced Research Projects Agency

Ballistic Missile Defense Organization

Defense Systems Management College

National Defense University

Armed Forces Staff College

Department of Defense Dependents Schools

Uniformed Services University of the Health Sciences

Armed Forces Radiology Research Institute

Washington Headquarters Services

AP2.2.2. Department of the Army. Army records may be requested from those Army officials who are listed in 32 CFR 518 (reference (ao)). Send requests to the Department of the Army, Freedom of Information and Privacy Acts Office, TAPC-PDR-PF, 7798 Cissna Road, Suite 205, Springfield, VA 22150-3166, for records of the Headquarters, U.S. Army, or if there is uncertainty as to which Army activity may have the records.

AP2.2.3. Department of the Navy. Navy and Marine Corps records may be requested from any Navy or Marine Corps activity by addressing a letter to the Commanding Officer and clearly indicating that it is a FOIA request. Send requests to Chief of Naval Operations, N09B30, 2000 Navy, Pentagon, Washington, DC 20350-2000, for records of the Headquarters, Department of the Navy, and to Commandant of the Marine Corps, (ARAD), Headquarters U.S. Marine Corps, 2 Navy Annex, Washington, DC 20380-1775, for records of the U.S. Marine Corps, or if there is uncertainty as to which Navy or Marine activities may have the records.

AP2.2.4. Department of the Air Force. Air Force records may be requested from the Commander of any Air Force installation, major command, or field operating agency (ATTN: FOIA Office). For Air Force records of Headquarters, United States Air Force, or if there is uncertainty as to which Air Force activity may have the records, send requests to Department of the Air Force, 11CS/SCSR(FOIA), 1000 Air Force, Pentagon, Washington, DC 20330-1000.

AP2.2.5. Defense Contract Audit Agency (DCAA). DCAA records may be requested from any of its regional offices or from its Headquarters. Requesters should send FOIA requests to the Defense Contract Audit Agency, ATTN: CMR, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060-6219, for records of its headquarters or if there is uncertainty as to which DCAA region may have the records sought.

AP2.2.6. Defense Information Systems Agency (DISA). DISA records may be requested from any DISA field activity or from its Headquarters. Requesters should send FOIA requests to Defense Information Systems Agency, Regulatory/General Counsel, 701 South Courthouse Road, Arlington, VA 22204-2199.

AP2.2.7. Defense Intelligence Agency (DIA). FOIA requests for DIA records may be addressed to Defense Intelligence Agency, ATTN: SVI-1, Washington, DC 20340-5100.

AP2.2.8. Defense *Security* Service (*DSS*). All FOIA requests for *DSS* records should be sent to the Defense *Security* Service, Office of FOIA and Privacy V0020, 1340 Braddock Place, Alexandria, VA 22314-1651.

AP2.2.9. Defense Logistics Agency (DLA). DLA records may be requested from its headquarters or from any of its field activities. Requesters should send FOIA requests to Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Ft. Belvoir, VA 22060-6221.

AP2.2.10. National Imagery and Mapping Agency (NIMA). FOIA requests for NIMA records may be sent to the National Imagery and Mapping Agency, General Counsel's Office, GCM, Mail Stop D-10, 4600 Sangamore Road, Bethesda, MD 20816-5003.

AP2.2.11. Defense Special Weapons Agency (DSWA). FOIA requests for DSWA records may be sent to the Defense Special Weapons Agency, Public Affairs Office, Room 113, 6801 Telegraph Road, Alexandria, VA 22310-3398.

AP2.2.12. National Security Agency (NSA). FOIA requests for NSA records may be sent to the National Security Agency/Central Security Service, FOIA/PA Services, N5P5, 9800 Savage Road, Suite 6248, Fort George G. Meade, MD 20755-6248.

AP2.2.13. Inspector General of the Department of Defense (IG, DoD). FOIA requests for IG, DoD records may be sent to the Inspector General of the Department of Defense, Chief FOIA/PA Office, 400 Army Navy Drive, Room 405, Arlington, VA 22202-2884.

AP2.2.14. Defense Finance and Accounting Service (DFAS). DFAS records may be requested from any of its regional offices or from its Headquarters. Requesters should send FOIA requests to Defense Finance and Accounting Service, Directorate for External Services, Crystal Mall 3, Room 416, Arlington, VA 22240-5291, for records of its Headquarters, or if there is uncertainty as to which DFAS region may have the records sought.

AP2.2.15. National Reconnaissance Office (NRO). FOIA requests for NRO records may be sent to the National Reconnaissance Office, Information Access and Release Center, Attn: FOIA Officer, 14675 Lee Road, Chantilly, VA 20151-1715.

AP2.3. Other Addresses. Although the below organizations are OSD and Chairman of the Joint Chiefs of Staff Components for the purposes of the FOIA, requests may be sent directly to the addresses indicated.

AP2.3.1. *DoD TRICARE Support Office*. *Director, TRICARE Support Office, Fitzsimmons USAG Building 611, Aurora, CO 80045-6900.*

AP2.3.2. Chairman, Armed Services Board of Contract Appeals (ASBCA). Chairman, Armed Services Board of Contract Appeals, Skyline Six Rm 703, 5109 Leesburg Pike, Falls Church, VA 22041-3208.

AP2.3.3. U.S. Central Command. Commander-in-Chief, U.S. Central Command, CCJ1/AG, MacDill Air Force Base, FL 33608-7001.

AP2.3.4. U.S. European Command. Commander-in-Chief, Headquarters, U.S. European Command/ECJ1-AA(FOIA) Unit 30400 Box 1000, APO AE 09128-4209.

AP2.3.5. U.S. Southern Command. Commander-in-Chief, U.S. Southern Command, *SCJ1-A, 3511 NW 91st Avenue, Miami, FL 33172-1217.*

AP2.3.6. U.S. Pacific Command. Commander-in-Chief, U.S. Pacific Command, USPACOM FOIA Coordinator (J042), Administrative Support Division, Joint Secretariat, Box 28, Camp H. M. Smith, HI 96861-5025.

AP2.3.7. U.S. Special Operations Command. Commander-in-Chief, U.S. Special Operations Command, Chief, Command Information Management Branch, ATTN: SOJ6-SI, 7701 Tampa Point Blvd., MacDill Air Force Base, FL 33621-5323.

AP2.3.8. U.S. Atlantic Command. Commander-in-Chief, U.S. Atlantic Command, Code J02P, Norfolk, VA 23511-5100.

AP2.3.9. U.S. Space Command. Commander-in-Chief, U.S. Space Command, Command Records Manager/FOIA/PA Officer, 150 Vandenberg Street, Suite 1105, Peterson Air Force Base, CO 80914-5400.

AP2.3.10. U.S. Transportation Command. Commander-in-Chief, U.S. Transportation Command, ATTN: *TCJ1-1F*, 508 Scott Drive, Scott Air Force Base, IL 62225-5357.

AP2.3.11. U.S. Strategic Command. Commander-in-Chief, U.S. Strategic Command, Attn: J0734, 901 SAC Blvd., Suite 1E5, Offutt Air Force Base, NE 68113-6073.

AP2.4. National Guard Bureau. FOIA requests for National Guard Bureau records may be sent to the Chief, National Guard Bureau, ATTN: NGB-ADM, Room 2C363, 2500 Army Pentagon, Washington, DC 20310-2500.

AP2.4 (AF) FOIA requests concerning Air National Guard Inspector General records should be sent to 11 CS/SCSR (FOIA), 1000 Air Force Pentagon, Washington DC 20330-1000.

AP2.5. Miscellaneous. If there is uncertainty as to which DoD Component may have the DoD record sought, the requester may address a Freedom of Information request to the Directorate for Freedom of Information and Security Review, Room 2C757, *1155 Defense Pentagon, Washington, DC 20301-1155.*

AP2.6. (Added)(AF) Addressing Air Force Freedom of Information Act Requests.

AP2.6.1. (Added)(AF) General.

AP2.6.1.1. (Added)(AF) The Department of the Air Force, a component of the DoD, includes the Office of the Secretary of the Air Force, the Chief of Staff of the Air Force (who is supported by Headquarters Air Force or "Air Staff" elements), the Major Commands (MAJCOM), the FOAs, and DRUs. This appendix lists the FOIA office addresses. A selected subordinate unit is also included in this appendix. Realignment of Air Force elements is frequent; addresses listed below are subject to change.

AP2.6.1.2. (Added)(AF) The Department of the Air Force does not have a central repository for Air Force records. FOIA requests are addressed to the Air Force element that has custody of the record desired. In answering inquiries regarding FOIA requests, Air Force personnel will assist requesters in determining the correct Air Force element to address their requests. If there is uncertainty as to the ownership of the record desired, refer the requester to the Air Force element that is most likely to have the record. Two organizations that include Air Force elements, and hold some Air Force-related records, are also included in the addresses listed below.

AP2.6.2. (Added)(AF) Listing of Air Force Element Addresses for FOIA Requests

AP2.6.2.1. (Added)(AF) MAJCOMs:

AP2.6.2.1.1. (Added)(AF) Air Combat Command (ACC): HQ ACC/SCTC, 230 East Flight Line Road, Langley AFB VA 23665-2781.

AP2.6.2.1.2. (Added)(AF) Air Education and Training Command (AETC): HQ AETC/SCTS, 61 Main Circle Suite 2, Randolph AFB TX 78150-4545.

AP2.6.2.1.3. (Added)(AF). Air Force Materiel Command (AFMC): HQ AFMC/SCDP, 4225 Logistics Avenue, Suite 6, Wright-Patterson AFB OH 45433-5745.

AP2.6.2.1.4. (Added)(AF) Air Force Reserve Command (AFRC): HQ AFRC/SCSM, 155 2nd Street, Robins AFB GA 31098-1635.

AP2.6.2.1.5. (Added)(AF) Air Force Special Operations Command (AFSOC): HQ AFSOC/SCMN, 100 Bartley Street, Suite 201, Hurlburt Field FL 32544-5273.

AP2.6.2.1.6. (Added)(AF) Air Force Space Command (AFSPC): HQ AFSPC/SCMA, 150 Vandenberg Street, Suite 1105, Peterson AFB CO 80914-4400.

AP2.6.2.1.7. (Added)(AF) Air Mobility Command (AMC): HQ AMC/SCYNR, 203 West Losey Street, Room 3180, Scott AFB IL 62225-5223.

AP2.6.2.1.8. (Added)(AF) Pacific Air Forces (PACAF): HQ PACAF/SCT, 25 E Street, Suite C220, Hickam AFB HI 96853-5409.

AP2.6.2.1.9. (Added)(AF) United States Air Forces in Europe (USAFE): HQ USAFE/SCMI, Unit 3050, Box 125, APO AE 09094-0125.

AP2.6.2.2. (Added)(AF) FOAs:

AP2.6.2.2.1. (Added)(AF) Air Force Audit Agency (AFAA): HQ AFAA/IMP, 1126 Air Force Pentagon, Washington DC 20330-1126.

AP2.6.2.2.2. (Added)(AF) Air Force Base Conversion Agency (AFBCA): AFBCA/ESA, 1700 North Moore Street, Suite 2300, Arlington VA 22209-2802.

AP2.6.2.2.3. (Added)(AF) Air Force Center for Environmental Excellence (AFCEE): HQ AFCEE/MSI, 3207 North Road, Brooks AFB TX 78235-5363.

AP2.6.2.2.4. (Added)(AF) Air Force Civil Engineering Support Agency (AFCESA): HQ AFCESA/IMD, 139 Barnes Drive Suite 1, Tyndall AFB FL 32403-5319.

AP2.6.2.2.5. (Added)(AF) Air Force Historical Research Agency (AFHRA): AFHRA/RSA, 600 Chennault Circle, Maxwell AFB AL 36112-6424.

AP2.6.2.2.6. (Added)(AF) Air Force Inspection Agency (AFIA): (Shared FOIA office/function, AFIA and Air Force Safety Agency) AFSA/JAR, 9700 Avenue G SE, Suite 236B, Kirtland AFB NM 87117-5670.

AP2.6.2.2.7. (Added)(AF) Air Force Medical Support Agency (AFMSA): AFMSA/CCEA, 2510 Kennedy Circle, Suite 208, Brooks AFB TX 78235-5121.

AP2.6.2.2.8. (Added)(AF) Air Force News Agency (AFNEWS): HQ AFNEWS/SCB, 203 Norton Street, Kelly AFB TX 78241-6105.

AP2.6.2.2.9. (Added)(AF) Air Force Office of Special Investigations (AFOSI): HQ AFOSI/SCR, P. O. Box 2218, Waldorf MD 20604-2218.

AP2.6.2.2.10. (Added)(AF) Air Force Personnel Center (AFPC): HQ AFPC/MSIMD, 550 C Street West, Suite 48, Randolph AFB TX 78150-4750.

AP2.6.2.2.11. (Added)(AF) Air Force Center for Quality and Innovation (AFCQMI): AFCQMI/CSP, 550 E Street East, Randolph AFB TX 78150-4451.

AP2.6.2.2.12. (Added)(AF) Air Force Safety Agency (AFSA): (Shared FOIA office/function, AFIA, and AFSA) AFSA/JARF, 9700 Avenue G SE, Suite 236B, Kirtland AFB NM 87117-5670.

AP2.6.2.1.13. (Added)(AF) Air Force Security Forces Center (AFSFC): AFSFC/CCQ 1720 Patrick Street, Lackland AFB TX 78236-5226.

AP2.6.2.2.14. (Added)(AF) Air Force Services Agency (AFSVA): AFSVA/SVSR, 9504 1H-35 North, Suite 250, San Antonio TX 78233-6635.

AP2.6.2.2.15. (Added)(AF) Air Force Technical Applications Center (AFTAC): AFTAC/LSCS, 1030 South Highway, Suite A1A, Patrick AFB FL 32925-6001.

AP2.6.2.2.16. (Added)(AF) Air Intelligence Agency (AIA): AIA/DOOI, 102 Hall Boulevard, Suite 229, San Antonio TX 78243-7029.

AP2.6.2.2.17. (Added)(AF) Air Reserve Personnel Center (ARPC): ARPC/SCS, 6760 East Irvington Place, #6600, Denver CO 80280-6600.

AP2.6.2.2.18. (Added)(AF) Air Force Weather Agency (AFWA): HQ AFWA/SCI, 106 Peacekeeper Drive Suite 2N3,Offutt AFB NE 68113-4039.

AP2.6.2.2.19. (Added)(AF) Air Force History Support Office (AFHSO): AFHSO, 500 Duncan Avenue Box 94, Bolling AFB DC 20332-1111.

AP2.6.2.3. (Added)(AF) DRUs:

AP2.6.2.3.1. (Added)(AF) Air Force Operational Test and Evaluation Center (AFOTEC): AFOTEC/SCM, 8500 Gibson Boulevard SE, Kirtland AFB NM 87117-5558.

AP2.6.2.3.2. (Added)(AF) 11th Wing: 11 CS/SCSR(FOIA), 1000 Air Force Pentagon, Washington DC 20330-1000 (if a person is unsure where to send a FOIA request for Air Force records, or is seeking records from the Office of the Secretary of the Air Force, or other Headquarters Air Force records, use this address).

AP2.6.2.3.4. (Added)(AF) United States Air Force Academy (USAFA): 10 CS/SCBD, 2304 Cadet Drive, Suite 232, USAFA CO 80840-5060.

AP2.6.2.4. (Added)(AF) Selected Subordinate Units:

AP2.6.2.4.1. (Added)(AF) Air Force Communications Agency (AFCA): HQ AFCA/CCQI, 203 West Losey Street, Room 1022, Scott AFB IL 62225-5203.

AP2.6.2.5. (Added)(AF) Organizations Which Include Air Force Elements:

AP2.6.2.5.1. (Added)(AF) Army and Air Force Exchange Service (AAFES): HQ AAFES/GC-E, P.O. Box 660202, Dallas TX 75266-0202.

AP2.6.2.5.2. (Added)(AF) National Guard Bureau (NGB) /Air National Guard: NGB-AD, 2500 Army Pentagon, Washington DC 20310-2500. (FOIA requests concerning Air National Guard IG records should be sent to 11 CS/SCSR (FOIA), 1000 Air Force Pentagon, Washington DC 20330-1000.)

AP3. APPENDIX 3

DEPARTMENT OF DEFENSE FORM 2086

"RECORD OF FREEDOM OF INFORMATION (FOI) PROCESSING COST"

RECORD OF FREEDOM OF INFORMATION (FOI) PROCESSING COST

Please read instructions on back before completing form.

REPORT CONTROL SYMBOL

1. REQUEST NUMBER	2. TYPE OF REQUEST *(X one)*				3. DATE COMPLETED *(YYYYMMDD)*
		a. INITIAL		b. APPEAL	

	TOTAL HOURS (1)		HOURLY RATE (2)		COST (3)
4. CLERICAL HOURS *(E-9/GS-8 and below)*					
a. SEARCH		X	$12.00	=	*
b. REVIEW/EXCISING					**
c. CORRESPONDENCE AND FORMS PREPARATION					
d. OTHER ACTIVITY					
5. PROFESSIONAL HOURS *(O-1 - O-6/GS-9 - GS-15)*					
a. SEARCH		X	$25.00	=	*
b. REVIEW/EXCISING					**
c. COORDINATION/APPROVAL/DENIAL					
d. OTHER ACTIVITY					
6. EXECUTIVE HOURS *(O-7 - GS-16/ES 1 and above)*					
a. SEARCH		X	$45.00	=	*
b. REVIEW/EXCISING					**
c. COORDINATION/APPROVAL/DENIAL					
7. COMPUTER SEARCH					
a. MACHINE HOURS		X		=	*
b. PROGRAMMER/OPERATOR TIME					
(1) Clerical			$12.00		*
(2) Professional			$25.00		*

	NUMBER (1)		RATE (2)		COST (3)
8. OFFICE COPY REPRODUCTION					
a. PAGES REPRODUCED		X	.15	=	*
9. MICROFICHE REPRODUCTION					
a. MICROFICHE REPRODUCED		X	.25	=	*
	TOTAL PAGES (1)		RATE (2)		COST (3)
10. PRINTED RECORDS					
a. FORMS		X	.02	=	*
b. PUBLICATIONS					*
c. REPORTS					*
	NUMBER (1)		ACTUAL COST (2)		COST (3)
11. COMPUTER COPY					
a. TAPE		X		=	*
b. PRINTOUT					*
	NUMBER (1)		ACTUAL COST (2)		COST (3)
12. AUDIOVISUAL MATERIALS					
a. MATERIALS REPRODUCED		X		=	*

13. FOR FOI OFFICE USE ONLY

a. SEARCH FEES PAID		f. TOTAL COLLECTABLE COSTS	
b. REVIEW FEES PAID		g. TOTAL PROCESSING COSTS	
c. COPY FEES PAID		h. TOTAL CHARGED	
d. TOTAL PAID		i. FEES WAIVED/REDUCED *(X one)*	Yes / No
e. DATE PAID *(YYYYMMDD)*			

* *Chargeable to all requesters after application of all waiver criteria.*
** *Chargeable only to commercial requesters.*

DD FORM 2086, JUL 1997 (EG) PREVIOUS EDITION MAY BE USED UNTIL SUPPLY IS EXHAUSTED. Designed using Perform Pro, WHS/DIOR, Jul 97

INSTRUCTIONS FOR COMPLETING DD FORM 2086

This form is used to record costs associated with the processing of a Freedom of Information request.

1. **REQUEST NUMBER** - First two digits will express Calendar Year followed by dash (-) and Component's request number, i.e., 97-001.

2. **TYPE OF REQUEST** - Mark the appropriate block to indicate initial request or appeal of a denial.

3. **DATE COMPLETED** - Enter year, month and day, i.e., 19970621.

4. **CLERICAL HOURS** - For each applicable activity category, enter time expended to the nearest 15 minutes in the total hours column. The activity categories are:

Search - Time spent in locating from the files the requested information.

Review/Excising - Time spent in reviewing the document content and determining if the entire document must retain its classification or segments could be excised thereby permitting the remainder of the document to be declassified. In reviews for other than classification, FOI exemptions 2 through 9 should be considered.

Correspondence and Forms Preparation - Time spent in preparing the necessary correspondence and forms to answer the request.

Other Activity - Time spent in activity other than above, such as duplicating documents, hand carrying documents to other locations, restoring files, etc.

- Multiply the time in the total hours column of each category by the hourly rate and enter the cost figures for each category.

5. **PROFESSIONAL HOURS** - For each applicable activity category, enter time expended to the nearest 15 minutes in the total hours column. The activity categories are:

Search/Review/Excising, and Other Activity - See explanation above.

Coordination/Approval/Denial - Time spent coordinating the staff action with interested offices or agencies and obtaining the approval for the release or denial of the requested information.

- Multiply the time in the total hours column of each category by the hourly rate and enter the cost figures for each category.

6. **EXECUTIVE HOURS** - For each applicable activity category, enter the time expended to the nearest 15 minutes in the total hours column. The activity categories are:

Search/Review/Excising - See explanation above.

Coordination/Approval/Denial - See explanation above.

- Multiply the time in the total hours column of each category by the hourly rate and enter the cost figures for each category.

7. **COMPUTER SEARCH** - When the amount of government-owned (not leased) computer processing machine time required to complete a search is known, and accurate cost information for operation on an hourly basis is available, enter the time used and the hourly rate. Then, calculate the total cost which is fully chargeable to the requester.

- Programmer and operator costs are calculated using the same method as in Items 4 and 5. This cost is also fully chargeable to requesters as computer search time.

8. **OFFICE COPY REPRODUCTION** - Enter the number of pages reproduced.

- Multiply by the rate per copy and enter cost figures.

9. **MICROFICHE REPRODUCTION** - Enter the number of microfiche copies reproduced.

- Multiply by the rate per copy and enter cost figures.

10. **PRINTED RECORDS** - Enter total pages in each category. The categories are:

Forms *(Include any type of printed forms)*

Publications *(Include any type of bound document, such as directives, regulations, studies, etc.)*

Reports *(Include any type of memorandum, staff action paper, etc.)*

- Multiply the total number of pages in each category by the rate per page and enter cost figures.

11. **COMPUTER COPY** - Enter the total number of tapes and/or printouts.

- Multiply by the actual cost per tape or printout and enter cost figures.

12. **AUDIOVISUAL MATERIALS** - Duplication cost is the actual cost of reproducing the material, including the wages of the person doing the work.

13. **FOR FOI OFFICE USE ONLY** -

Search Fees Paid - Enter total search fees paid by the requester.

Review Fees Paid - Enter total review fees paid by the requester.

Copy Fees Paid - Enter the total of copy fees paid by the requester.

Total Paid - Add search fees paid and copy fees paid. Enter total in the total paid block.

Date Paid - Enter year, month, and day, i.e., 19971024, the fee payment was received.

Total Collectable Costs - Add the blocks in the cost column marked with an asterisk and enter total in the total collectable cost block. Apply the appropriate waiver for the category of requester prior to inserting the final figure. Further discussion of chargeable fees is contained in Chapter VI of DoD Regulation 5400.7-R.

Total Processing Costs - Add all blocks in the cost column and enter total in the total processing cost block. The total processing cost in most cases will exceed the total collectable cost.

Total Charged - Enter the total amount that the requester was charged, taking into account the fee waiver threshold and fee waiver policy.

Fees Waived/Reduced - Indicate if the cost of processing the request was waived or reduced by placing an "X" in the "Yes" block or the "No" block.

AP4. APPENDIX 4

DD Form 2086-1

"RECORD OF FREEDOM OF INFORMATION (FOI) PROCESSING COST FOR TECHNICAL DATA

RECORD OF FREEDOM OF INFORMATION (FOI) PROCESSING COST FOR TECHNICAL DATA

Please read instructions on back before completing form.

REPORT CONTROL SYMBOL

1. REQUEST NUMBER	2. TYPE OF REQUEST *(X one)*		3. DATE COMPLETED *(YYYYMMDD)*
	a. INITIAL	b. APPEAL	

4. CLERICAL HOURS *(E-9/GS-8 and below)*	TOTAL HOURS (1)		HOURLY RATE (2)		COST (3)
a. SEARCH		X	$13.25	=	*
b. REVIEW/EXCISING					*
c. CORRESPONDENCE AND FORMS PREPARATION					
d. OTHER ACTIVITY					
e. MINIMUM CHARGE			$ 8.30		

5. PROFESSIONAL HOURS *(O-1 - O-6/GS-9 - GS/GM-15)*	TOTAL HOURS (1)		HOURLY RATE (2)		COST (3)
a. SEARCH		X	ACTUAL HOURLY RATE	=	*
b. REVIEW/EXCISING					*
c. COORDINATION/APPROVAL/DENIAL					
d. OTHER ACTIVITY					
e. MINIMUM CHARGE			1/2 HOURLY RATE		

6. EXECUTIVE HOURS *(O-7/GM-16/ES 1 and above)*	TOTAL HOURS (1)		HOURLY RATE (2)		COST (3)
a. SEARCH		X	ACTUAL HOURLY RATE	=	*
b. REVIEW/EXCISING					*
c. COORDINATION/APPROVAL/DENIAL					
d. MINIMUM CHARGE			1/2 HOURLY RATE		

7. COMPUTER SEARCH	TOTAL HOURS (1)		HOURLY RATE (2)		COST (3)
a. MACHINE HOURS		X		=	*
b. PROGRAMMER/OPERATOR TIME					
- Clerical			$13.25 OR MINIMUM		*
- Professional			ACTUAL OR MINIMUM		*

8. REPRODUCTION	NUMBER (1)		RATE (2)		COST (3)
a. AERIAL PHOTOGRAPHS, SPECIFICATIONS, PERMITS, CHARTS, BLUEPRINTS, AND OTHER TECHNICAL DOCUMENTS		X	$ 2.50	=	*
b. ENGINEERING DATA *(Microfilm)*					
- Aperture cards					
-- Silver duplicate negative, per card			.75		*
-- When keypunched and verified, per card			.85		*
-- Diazo duplicate negative, per card			.65		*
-- When keypunched and verified, per card			.75		*
- 35 mm roll film, per frame			.50		*
- 16 mm roll film, per frame			.45		*
- Paper prints *(engineering drawings)*, each			1.50		*
- Paper reprints of microfilm indices, each			.10		*
c. AUDIOVISUAL MATERIALS *(Insert actual cost in block (2))*					*

d. OTHER TECHNICAL DATA RECORDS
Charges for any additional services not specifically provided above shall be made by components at the following rates:

- Minimum charge for office copy *(up to six images)*			$ 3.50		*
- Each additional image		X	.10	=	*
- Each typewritten page			3.50		*
- Certification and validation with seal, each			5.20		*
- Hand-drawn plots and sketches, each hour or fraction thereof			12.00		*

** Chargeable to all requesters.*

9. FOR FOI OFFICE USE ONLY			
a. SEARCH FEES PAID		f. TOTAL COLLECTABLE	
b. REVIEW FEES PAID		g. TOTAL PROCESSING	
c. COPY FEES PAID		h. TOTAL CHARGED	
d. TOTAL PAID		i. FEES WAIVED/REDUCED *(X one)*	YES / NO
e. DATE PAID *(YYYYMMDD)*			

DD FORM 2086-1, JUL 1997 (EG)

PREVIOUS EDITION MAY BE USED UNTIL SUPPLY IS EXHAUSTED.

Designed using Perform Pro, WHS/DIOR, Jul 97

INSTRUCTIONS FOR COMPLETING DD FORM 2086-1

This form is used to record costs associated with the processing of a Freedom of Information request for technical data.

1. REQUEST NUMBER - First two digits will express Calendar Year followed by dash (-) and Component's request number, i.e., 87-001.

2. TYPE OF REQUEST - Mark the appropriate block to indicate initial request or appeal of a denial.

3. DATE COMPLETED - Enter year, month and day, i.e., 19970621.

4. CLERICAL HOURS - For each applicable activity category, enter time expended to the nearest 15 minutes in the total hours column. The activity categories are:

Search - Time spent in locating from the files the requested information.

Review/Excising - Time spent reviewing the document content and determining if the entire document must retain its classification or segments could be excised thereby permitting the remainder of the document to be declassified. In reviews for other than classification, FOI exemptions 2 through 9 should be considered.

Correspondence and Forms Preparation - Time spent in preparing the necessary correspondence and forms to answer the request.

Other Activity - Time spent in activity other than above, such as duplicating documents, hand carrying documents to other locations, restoring files, etc.

- Multiply the time in the total hours column of each category by the hourly rate and enter the cost figures for each category. Both search and review costs are chargeable to the requester.

5. PROFESSIONAL HOURS - For each applicable activity category, enter time expended to the nearest 15 minutes in the total hours column. The activity categories are:

Search/Review/Excising, and Other Activity - See explanation above.

Coordination/Approval/Denial - Time spent coordinating the staff action with interested offices or agencies and obtaining the approval for the release or denial of the requested information.

- Multiply the time in the total hours column of each category by the hourly rate and enter the cost figures for each category. Both search and review costs are chargeable to the requester.

6. EXECUTIVE HOURS - For each applicable activity category, enter the time expended to the nearest 15 minutes in the total hours column. The activity categories are:

Search/Review/Excising - See explanation above.

Coordination/Approval/Denial - See explanation above.

- Multiply the time in the total hours column in each category by the hourly rate and enter the cost figures for each category. Review costs are chargeable to the requester.

7. COMPUTER SEARCH - When the amount of government-owned (not leased) computer processing machine time is known, and accurate cost information for operation on an hourly basis is available, enter the time used and the hourly rate. Then, calculate the total cost which is fully chargeable to the requester.

- Programmer and operator costs are calculated using the same method as in Items 4 and 5. This cost is also fully chargeable to requesters as computer search time.

8. REPRODUCTION - Enter the number of pages or items reproduced.

- Multiply by the rate per copy and enter cost figures. The entire cost is chargeable to the requester. Reproduction cost for audiovisual material is the actual cost of reproducing the material, including the wage of the person doing the work.

9. FOR FOI OFFICE USE ONLY -

Search Fees Paid - Enter total search fees paid by the requester.

Review Fees Paid - Enter total review fees paid by the requester.

Copy Fees Paid - Enter the total of copy fees paid by the requester.

Total Paid - Add search fees paid and copy fees paid. Enter total in the total paid block.

Date Paid - Enter year, month, and day, i.e., 19971024, the fee payment was received.

Total Collectable Costs - Add the blocks in the cost column marked with an asterisk and enter total in the total collectable cost block. Only search, reproduction and printed records are chargeable to the requester. Further discussion of collectable costs is contained in Chapter VI, Section 3, DoD Regulation 5400.7-R.

Total Processing Costs - Add all blocks in the cost column and enter total in the total processing cost block. The total processing cost in most cases will exceed the total collectable cost.

Total Charged - Enter the total amount that the requester was charged, taking into account the fee waiver threshold and fee waiver policy.

Fees Waived/Reduced - Indicate if the cost of processing the request was waived or reduced by placing an "X" in the "YES" block or an "X" in the "NO" block.

AP5. APPENDIX 5

DD Form 2564

"ANNUAL REPORT FREEDOM OF INFORMATION ACT"

ANNUAL REPORT
FREEDOM OF INFORMATION ACT

REPORT CONTROL SYMBOL

1. INITIAL REQUEST DETERMINATIONS

a. TOTAL REQUESTS	b. GRANTED IN FULL	c. DENIED IN PART	d. DENIED IN FULL	e. "OTHER REASONS"	f. TOTAL ACTIONS

2a. EXEMPTIONS INVOKED ON INITIAL REQUEST DETERMINATIONS

(b) (1)	(b) (2)	(b) (3)	(b) (4)	(b) (5)	(b) (6)

(b) (7)(A)	(b) (7)(B)	(b) (7)(C)	(b) (7)(D)	(b) (7)(E)	(b) (7)(F)	(b) (8)	(b) (9)

2b. "OTHER REASONS" CITED ON INITIAL DETERMINATIONS

1	2	3	4	5	6	7	8	9	TOTAL

2c. STATUTES CITED ON INITIAL REQUEST (b)(3) EXEMPTIONS

(1)(b)(3) STATUTE CLAIMED	NUMBER OF INSTANCES	COURT UPHELD? *(Yes or No)*	CONCISE DESCRIPTION OF MATERIAL WITHHELD
		DRAFT	

3. APPEAL DETERMINATIONS

a. TOTAL REQUESTS	b. GRANTED IN FULL	c. DENIED IN PART	d. DENIED IN FULL	e. "OTHER REASONS"	f. TOTAL ACTIONS

4a. EXEMPTIONS INVOKED ON APPEAL DETERMINATIONS					
(b) (1)	(b) (2)	(b) (3)	(b) (4)	(b) (5)	(b) (6)

(b) (7)(A)	(b) (7)(B)	(b) (7)(C)	(b) (7)(D)	(b) (7)(E)	(b) (7)(F)	(b) (8)	(b) (9)

4b. "OTHER REASONS" CITED ON APPEAL DETERMINATIONS									
1	2	3	4	5	6	7	8	9	TOTAL

4c. STATUTES CITED ON APPEAL (b)(3) EXEMPTIONS			
(1)(b)(3) STATUTE CLAIMED	NUMBER OF INSTANCES	COURT UPHELD? *(Yes or No)*	CONCISE DESCRIPTION OF MATERIAL WITHHELD

5. NUMBER AND MEDIAN AGE OF INITIAL CASES PENDING	(1) AS OF BEGINNING REPORT PERIOD	(2) AS OF END REPORT PERIOD
a. TOTAL INITIAL REQUESTS PENDING *(open)*		
b. MEDIAN AGE *(in days)* OF OPEN INITIAL REQUESTS		
6. TOTAL NUMBER OF INITIAL REQUESTS RECEIVED DURING THE FISCAL YEAR		

DRAFT

7. TYPES OF INITIAL REQUESTS PROCESSED AND MEDIAN AGE	TOTAL NUMBER OF CASES	MEDIAN AGE *(Days)*
a. SIMPLE		
b. COMPLEX		
c. EXPEDITED PROCESSING		
8. TOTAL AMOUNT COLLECTED FROM THE PUBLIC		$

9. PROGRAM COST	
a. NUMBER OF FULL TIME STAFF	
b. NUMBER OF PART TIME STAFF	
c. ESTIMATED LITIGATION COST	$
d. TOTAL PROGRAM COST	$

10. AUTHENTICATION		
a. SIGNATURE *(Approving Official)*		
b. TYPED NAME *(Last, First, Middle Initial)*	c. DUTY TITLE	
d. AGENCY NAME		e. TELEPHONE NUMBER *(Include Area Code)*

DD FORM 2564 (BACK), 980206 DRAFT

AP6. APPENDIX 6

DOD FREEDOM OF INFORMATION ACT PROGRAM COMPONENTS

Office of the Secretary of Defense/Chairman of the Joint Chiefs of Staff/Combatant Commands, Defense Agencies, and the DoD Field Activities

Department of the Army

Department of the Navy

Department of the Air Force

Defense Information Systems Agency

Defense Contract Audit Agency

Defense Intelligence Agency

Defense *Security* Service

Defense Logistics Agency

National Imagery and Mapping Agency

Defense Special Weapons Agency

National Security Agency

Office of the Inspector General, Department of Defense

Defense Finance and Accounting Service

National Reconnaissance Office

(ADDED)(AF) AP7. APPENDIX 7

SAMPLES, AIR FORCE FREEDOM OF INFORMATION ACT PROCESSING DOCUMENTS

AP7.1. GENERAL. This appendix includes suggested language in paragraph format that tracks Air Force and DoD FOIA guidance. The rest of the body of letters and memorandums should comply with Air Force administrative guidance. Each MAJCOM may elect to prepare their own verbiage to meet their specific needs, so long as FOIA processing actions are consistent with guidance in DoD 5400.7-R and this supplement. In this appendix, language in italics is for explanatory purposes only. DO NOT include any of the italicized language of this appendix in your FOIA correspondence. When optional language must be selected, the optional language will be presented within brackets. Use only the portions that apply to the specific request or response.

AP7.2. INITIAL RECEIPT OF FREEDOM OF INFORMATION ACT REQUEST.

We received your Freedom of Information Act (FOIA) request dated ## Month year, for (*summarize the request*) on ## Month year (*date received*). We will provide you our release determination by *(enter date that is 20 workdays from date you received the request).* [Based on our initial review, we believe we cannot process your request within 20 workdays.] *(If "cannot" is used, add appropriate explanation; examples follow.)* Please contact (name and commercial telephone number) if you have any questions and refer to case number#######.

AP7.3 INTERIM RESPONSE.

Your request will be delayed because: all or part of the responsive records are not located at this installation; (*and/or)* Processing this FOIA request will require us to collect and review a substantial number of records (*and/or)* Other Air Force activities or other agencies (*if applicable)* to include the submitter of the information, need to be involved in deciding whether or not to release the responsive records. We expect to reply to your request not later than (*give a date that is not more than 30 workdays from the initial receipt of the request*); (*or) (If processing the FOIA request will take more than the allowed time limits to respond).* We find we are unable to meet the time limits imposed by the FOIA in this instance because (*tell the requester the reason for the delay) (example: the records are classified and must be reviewed for possible declassification by other activities or agencies).* We anticipate completing your request by (date).

(*When charging fees is appropriate),* the FOIA provides for the collection of fees based on the costs of processing a FOIA request and your fee category. Based on the information in your request, we have determined your fee category is [commercial/educational *or* noncommercial scientific institution *or* news media/all others]. As a result, you (*if commercial category*) are required to pay all document search, review and duplication costs over $15.00. (*or)* As a result, you (*if educational or noncommercial scientific institution or news media*) will be provided the first one hundred (100) pages

free of charge; you are required to pay any duplication costs over and above those amounts. (*or)* As a result, you *(if all others)* will be provided the first two (2) hours of search time and the first one hundred (100) pages free of charge; you are required to pay any search and duplication costs over and above those amounts.

AP7.4. REQUEST FOR A MORE SPECIFIC DESCRIPTION.

Your request does not sufficiently describe the desired records. The FOIA applies to existing Air Force records; without more specific information from you, we cannot identify what documents might be responsive to your request. Please give us whatever additional details you may have on the Air Force records you want. Can you tell us when the records were created, and what Air Force element may have created the records? If this request involves an Air Force contract, do you know the contract number and dates it covered? Our address is (*include name and complete mailing address*), our fax number is (*give fax number*) our e-mail address is (*optional - give complete e-mail address*). Based on the original request you sent us, we are unable to respond.

AP7.5. SINGLE LETTER ACKNOWLEDGING RECEIPT OF REQUEST AND GIVING FINAL RESPONSE (*If you can complete a FOIA request within the statutory 20-workday processing period, Air Force elements may elect to send a single letter to the requester, along with responsive records which are released to the requester in full).*

We received your Freedom of Information Act (FOIA) request dated ## Month year, for (*summarize the request*) on ## Month year (*date received*). A copy (*or)* Copies of (*describe the record(s) being released*) [is/are] releasable and [is/are] attached.

AP7.6. COLLECTION OF FEES.

The FOIA provides for the collection of fees based on the costs of processing a FOIA request and your fee category. We have placed you in the *(enter the fee category)* fee category. In your case, we have assessed a charge of $_____ for processing your request. The fee was calculated in the following manner: (*Give a detailed cost breakdown: for example, 15 pages of reproduction at $0.15 per page; 5 minutes of computer search time at $43.50 per minute, 2 hours of professional level search at $25 per hour.)* Please make your check payable to (*appropriate payee*) and send it to (*give your complete mailing address*) by (*date 30 days after the letter is signed*). (*or*) The FOIA provides for the collection of fees based on the costs of processing a FOIA request and your fee category. We have placed you in the *(enter the fee category);* however, in this case, we have waived collecting fees.

AP7.7. MULTITRACK PROCESSING LETTERS TO FOIA REQUESTERS *(When using the multitrack FOIA processing system, determine which of the following paragraphs to include in your letters to the requester. To the extent it may apply, include language from paragraph 2 of the sample. If a requester asks for expedited processing, answer carefully if you decide not to provide expedited*

processing, because requesters may appeal denial of their request for expedited processing. Advise requesters placed into the complex track in writing how they can simplify their request to qualify for the simple track.)

We received your Freedom of Information Act (FOIA) request dated ## Month year, for (*summarize the request*) on ## Month year (*date received*). Because our organization has a significant number of pending FOIA requests, which prevents us from making a response determination within 20 workdays, we have instituted multitrack processing of requests. Based on the information you provided, we have placed your request in the [simple *or* complex] track. We have assigned number ##### to identify your request; should you need to contact us about your request, please write or call (*name and telephone)* and use this number to assist us in responding more promptly.

Based on our current backlog, we expect to respond to your request not later than (*give an estimated date*). Our policy is to process requests within their respective tracks in the order in which we receive them. We do process each FOIA request as quickly as we can.

AP7.8. <u>IF THE REQUEST IS PLACED IN THE COMPLEX TRACK</u>.

In your case, processing your request is complex because (*give basic reasons this is a complex case: request was vague or complicated; the records sought are voluminous; multiple organizations will have to work on this request; records are classified; responsive records came from another command/another service/a nongovernment source; responsive records were part of the Air Force's decision-making process, and the prerelease review will require policy determinations from different Air Force elements; records describe law enforcement activities; records involve foreign policy issues; due to the nature of your request and/or the nature of our computer system, responding to your request or providing a response in the electronic format you requested will be technically complex, etc*.). Simplifying your request might permit quicker processing in the following ways: (*describe ways the search could be narrowed to fewer records, or ways policy issues could be avoided, etc*.) Can you tell us when the records were created, and what Air Force element may have created the records? If this request involves an Air Force contract, do you know the contract number? Please give us whatever additional details you may have on the Air Force records you are seeking, so we can attempt to streamline the processing of your request. Our address is (*give complete mailing address*), our fax number is (*give fax number*) our e-mail address is (*optional - give complete e-mail address*).

<u>AP7.9. IF THE REQUESTER ASKS THAT YOU EXPEDITE THEIR REQUEST</u>:

Because individuals receiving expedited processing may receive a response before other earlier requesters, there are administrative requirements you must meet before we can expedite a request. In your request, you asked that we expedite processing. In order for us to expedite a request, the requester must provide a statement certifying the reasons supporting their request are true and correct to the best of their knowledge.

There are four categories of requests eligible for expedited processing. We can expedite your request if you demonstrate you need the information because (1) failure to obtain the records on an expedited basis could pose an imminent threat to life or physical safety of an individual; or (2) the information is urgently needed by an individual primarily engaged in disseminating information in order to inform the public about actual or alleged Federal Government activity; or (3) failure to obtain the records on an expedited basis could lead to an imminent loss of substantial due process rights, or (4) release would serve a humanitarian need by promoting the welfare and interests of mankind.

In the second category, "urgently needed" means the information itself has a particular value that it will lose if it is not disseminated quickly. Ordinarily this means the information concerns a breaking news story of general public interest. Historic information, or information sought for litigation or commercial activities usually would not qualify for expedited processing in the second category. Also, the fact that a news organization has an internal broadcast or publication deadline, so long as the deadline was unrelated to the nature of the information itself (for example, the information was not a breaking news story of general public interest) would not make the information "urgently needed."

In this case, we have determined your FOIA request [will /will not] receive expedited processing. We came to this conclusion because you [did /did not] demonstrate you need the information because failure to obtain the records on an expedited basis [could or could not] reasonably expect to pose an imminent threat to life or physical safety of an individual (*or)* the information [is or is not] urgently needed in order to inform the public about actual or alleged Federal Government activity (*or)* failure to obtain the records on an expedited basis [could or could not] reasonably expect to lead to an imminent loss of substantial due process rights, (*or)* release [would or would not] serve a humanitarian need by promoting the welfare and interests of mankind (*and/or)* your request for expedited processing did not meet the statutory requirements of the FOIA; you did not provide enough information to make a determination of compelling need for the information you requested (*and/or)* you did not properly certify your request.

AP7.10. IF YOU DENY A REQUEST FOR EXPEDITED PROCESSING:

If you consider our decision not to expedite your request incorrect, you may appeal our decision. Include in your appeal letter the reasons for reconsidering your request for expedited processing, and attach a copy of this letter. Address your appeal to: Secretary of the Air Force through (*address of MAJCOM FOIA office)*.

In the meantime, we will continue to process your request in the [simple/complex] processing track.

AP7.11. CERTIFICATION, COMPUTER SYSTEMS MANAGER (ELECTRONIC RECORDS OR FORMAT REQUESTED*)* *(When answering a request for electronic records, based on the configuration of your hardware and/or software, certain factors may make a particular request complex.*

Have your computer system manager advise you whether or not they can create the new record/format on a "business as usual" basis. If producing the record/format would entail a significant expenditure of resources in time and manpower that would cause significant interference with the operation of the information system and adversely affect mission accomplishment, you do not need to process the request. The FOIA office needs to get a certification from the computer systems manager to document this determination to support their response. Possible language for this certification is provided below.)

I, (*rank/grade and name*) am the computer systems manager for (*organization with electronic records responsive to FOIA request*). In consultation with (*FOIA office*), I have considered the FOIA request of (*requester's name*), our ##### (*FOIA identifier*), which asked for (*describe electronic record or format*). We [do/do not] have electronic records that are responsive to this request *(or)* data that we [can/cannot] configure into the requested format. (*If there <u>are</u> electronic records)* The existing electronic records [do/do not] contain nonreleasable data that we [can/cannot] remove from the electronic record. Because of the way our [computer system/database/software] (*use all that apply, specify hardware and/or software nomenclature if possible; for example, IBM ###, Microsoft Excel*) is configured, creating the electronic record (*or)* modifying the existing record/format would entail a significant expenditure of resources in time and manpower that would cause significant interference with the operation of the information system and adversely affect mission accomplishment (*describe how responding would interfere and time/manpower resources required, give estimated reprogramming time, if possible*). I have applied the DoD 5400.7-R paragraph C1.5.7.2. "standard of reasonableness" in considering this request. I understand that when the capability exists to respond to a FOIA request that would require only a "business as usual" approach to electronically extract the data and compile an electronic record or reformat data to satisfy a FOIA request, then creation of the electronic record or reformatting the data would be appropriate. In this case, a significant expenditure of resources and manpower would be required to compile the electronic record (*or)* reformat existing data. This activity would cause a significant interference with the operation of our automated information system. I certify creation of the electronic record (*or)* reformatting existing data in order to respond to this request would not be reasonable, under the circumstances.

Signature

(*Date Signed*) (*Signature Block)*

*(**<u>NOTE</u>:** Some electronic data requests may include a request for software. You may have to release government-developed software that is not otherwise exempt, if requested under the FOIA. Exemptions 1 -classified software, 2 -testing, evaluation, or similar software, 3-exempt by statute, 5-deliberative process/privileged software, and 7 -law enforcement operations software may apply, based on the nature of the requested software. If the software is commercial off-the-shelf software, as opposed to software developed by the government, the software may qualify to be withheld from release under FOIA exemption 4. See paragraph C3.2.1.4.7 which would permit withholding of: "Computer software copyrighted under the Copyright Act of 1976 (17 U.S.C. 106) (reference (t)), the disclosure of which would have an adverse impact on the potential market value of a copyrighted work.*"

AP7.12. "NO (PAPER OR ELECTRONIC) RECORDS" OR "REQUESTED FORMAT NOT AVAILABLE" LETTERS

This is in response to your Freedom of Information Act (FOIA) request dated ## Month year, for (*summarize the request*) on ## Month year (*date received*), our number #####.

A thorough search by (*identify the unit(s) that tried to locate responsive records*) did not locate any records responsive to your request. (*If the requester asked questions, and there are no responsive records that would provide the answers to those questions):* The FOIA applies to existing Air Force records; the Air Force need not create a record in order to respond to a request.

(*OR*)

A thorough assessment by the OPR and the computer systems manager has determined we cannot provide the [electronic record data] in the format you requested. (*If this can be done on a "business as usual basis):"* [Paper copies American Standard Code for Information Interchange (ASCII) files] of the data you requested are attached.

If you interpret this "no records" response as an adverse action, you may appeal it in writing to the Secretary of the Air Force. Your appeal should be postmarked no later than 60 calendar days from the date of this letter. Address your letter as follows:

Secretary of the Air Force

Thru: *(MAJCOM FOIA Office*)

(*mailing address*)

The FOIA provides for the collection of fees based on the costs of processing a FOIA request and your fee category. We have placed you in the *(enter category)* fee category; however, in this case, we have waived fees. (*If paper copies or ASCII files are provided:*) The FOIA provides for the collection of fees based on the costs of processing a FOIA request and your fee category. In your case, as a requester in the fee category of *(add appropriate category)*, we have assessed a charge of $_____ for processing your request. The fee was calculated in the following manner: (*Give a detailed cost breakdown: for example, 15 pages of reproduction at $0.15 per page; 5 minutes of computer search time at $43.50 per minute, 2 hours of professional level search at $25 per hour.)* Please make your check payable to (*appropriate payee*) and send it to (*give your complete mailing address*) by *(date 30 days after the letter is signed*).

AP7.13. REFERRAL OR COORDINATION LETTERS. (*These letters are to tell the requester all or part of the request was referred to another Air Force organization, to refer or coordinate the request to another federal government organization, and to advise a nongovernment submitter a FOIA request was received for information they submitted.)*

AP7.13.1 Letter to Requester.

(*If all or part of a request has been referred, write to the requester*:) Your Freedom of Information Act (FOIA) request dated ## Month year, for (*summarize the request*) received on ## Month year (*date received*), our number #####, was referred (*or*) must be coordinated with (*give mailing address of the FOIA office to which you are referring all or part of the request, the identity of the federal government organization you are either coordinating with or are referring all or part of the request to, or that you must coordinate with the nongovernment submitter of responsive information*). (*On referrals*:*)* That office will process [all/part] of your request (*describe which part is being referred if the entire request is not being referred*) and they will respond directly to you. (*On coordinations*:*)* That organization has a significant interest in the records (*or)* created the records that may answer to your request. (*Before notifying a requester of a referral to another DoD component or federal agency, consult with them to determine if their association with the material is exempt. If so, protect the association and any exempt information without revealing the identity of the protected activity.)* (*When a nongovernment submitter is involved*:*)* The nongovernment submitter of information that may answer your request needs time to respond to the possible release of information under the FOIA.

Because we must refer (*or)* coordinate your request outside our organization, your request will be delayed. We will determine whether any records are available; as soon as is practicable, a decision will be made whether to release or to withhold from disclosure any responsive records under the FOIA, Title 5 U.S.C. Section 552. Your request will be processed as expeditiously as circumstances permit.

AP7.13.2. Letter To Another Government Agency.

(*If all or part of a request was referred or requires coordination, write to the government entity):* On ## Month year (*date received*), our organization received a Freedom of Information Act (FOIA) request from (*identity of requester*), attachment 1, dated ## Month year, for (*summarize the request*). Based on our assessment of that request, our number #####, we need to [refer/coordinate] [all/part] of that request to you (*describe which part is being referred or coordinated, if it was not the entire request*). (*Name and phone number of person who agreed to the referral or coordination*) accepted this referral (*or)* coordination action was on (*date*). We notified the requester of this action (see Attachment 2).

We [do/do not] hold records responsive to this request. (*If do hold is used:)* Copies of responsive records located in our files are included at Attachment 3 to assist you in making your assessment on the releasability of [our/your] related records. If you need to contact us, our phone number and address is (*give name, phone and complete mailing address*), our fax number is (*give fax number*) our e-mail address is (*give complete e-mail address).*

AP7.13.3. Letter To Submitter of Contract-Related Information.

(If contractor-submitted information is involved, write to the submitter:) On ## Month year (*date received*), our organization received a Freedom of Information Act (FOIA) request from (*identity of requester*), our number #####, dated ## Month year, for (*summarize the request*). Information you submitted to the Air Force was identified as responsive to this request, see copies at Attachment 1.

To determine the releasability of the information contained in these documents and to give you the maximum protection under the law, please review the attached documents and give us the information outlined in Attachment 2 *(Appendix 11)*. If you feel the information is privileged or confidential, consists of proprietary commercial or financial information, and otherwise meets the statutory requirements for withholding the information from release under FOIA exemption 4, Title 5 U.S.C. 552(b)(4), respond to us in writing not later than ## working days from the date of this letter (usually 30 calendar days.) If you object to release of this information under the FOIA, identify the items, lines, columns or portions you believe we should withhold from release.

You will also need to provide a written explanation of how release would adversely impact or cause harm to your competitive position, your commercial standing, or other legally protected interests. An assertion that "we should deny because all of the information was submitted in confidence" or "deny because all of the information was marked as proprietary in nature" would not justify withholding of the requested information under the FOIA. If you need to contact us, call or write *(give name)*, phone number is (*give commercial number*), our address is *(give complete mailing address)*, our fax number is (*give fax number*) our e-mail address is *(give complete e-mail address)*.

AP7.13.3.1 (Added)(AFSPC) Letter Notifying Submitter of a Request for its Records.

We received a request under the Freedom of Information Act for (describe the records requested). We are notifying you of this request to allow you the opportunity to comment on the releasability of these records.

If release of the requested records could reasonably be expected to cause substantial competitive harm to your commercial interests, identify in writing the specific information contained within the records. Provide detailed reasons substantiating the competitive harm the release of such information would cause your company. Self-serving conclusory or blanket statements that the requested information is proprietary whose release will cause substantial harm is not sufficient. The Act requires the government to release any reasonably segregable part of the record that is not exempt from disclosure. Your failure to substantiate the probability of substantial harm to your competitive position or to other commercial interests may require us to release the requested information.

We must have your reply not later than (specify a date that is no more than 30 calendar days from the date of this letter). We will consider your failure to reply to this letter by the suggested date to mean you have no objections to public release of the requested documents in their entirety.

Please call (name and commercial phone number of contracting activity) if you have any questions.

***Note*:** This letter satisfies the notice required by Executive Order 12600. It is also intended to underscore the submitter's responsibility to specifically identify commercial or financial information contained in the requested records and to justify its exemption from disclosure.

AP7.13.3.2. (Added)(AFSPC) Letter Notifying Submitter of Determination to Disclose Records.

We received your letter dated _____regarding (describe the record(s) requested) which (was)(were) requested under the Freedom of Information Act. You have objected to the release of (describe the information contained in the requested records to which the submitter is objecting) because you believe that the release of this information would likely cause substantial harm to your future competitive position. This letter notifies you of our determination regarding releasability of the requested records.

After careful consideration of your rationale for withholding the requested information, we have determined [(that none of the requested information)(that only those bracketed portions of)] would likely [(cause substantial harm to your future competitive position if released to the public, including your competitors) (impair Government's future ability to obtain necessary information).] The basis for our determination is (provide a brief explanation why the submitter's objections are not being sustained). Thus, [(none)(only the bracketed portions)] of the requested records will be withheld pursuant to United States Code, Title 5, Section 552(b)(4). The requested information (except that which has been bracketed) will be released to the requester on (specify a date that is at least two weeks from the date of the letter).

AP7.13.4. Letter Requesting State Department Coordination.

(If the State Department is involved in coordinating on a request, fax or e-mail 11 CS/SCSR so they can inform SAF/IA if appropriate). On ## Month year (*date received*), our organization received a Freedom of Information Act (FOIA) request from (*identity of requester*), our number #####, dated ## Month year, for (*summarize the request*). Because of the nature of this request, we were advised by (*note the individual and organization who told you to coordinate the request with the State Department; this may be a MAJCOM or Combatant Command—give telephone and facsimile numbers if known*) we need to coordinate this request with the Department of State. In accordance with DoD 5400.7-R, Air Force Supplement, paragraph C5.2.8.4, we are informing you of their involvement in this FOIA request.

{*Provide any specifics available*.} Air Force records are involved in this action. If you need to contact us, our phone number is (*give commercial and DSN numbers*), our address is (*give complete mailing address*), our fax number is (*give fax number*) our e-mail address is (*give complete e-mail address*).

AP7.14. CERTIFICATION OF INITIAL CLASSIFICATION OR DECLASSIFICATION AUTHORITY (*When denying a FOIA request, in whole or in part, because the information requested is classified, the initial classification authority, his or her successor, or a declassification authority, needs to determine if the records are "properly and currently classified," and therefore must be withheld from release under FOIA exemption (b)(1); also, you need to determine that you cannot release any reasonably segregable additional portions. Language that certifies such a determination was made on a FOIA request involving classified records follows).*

AP7.14.1. Sample Certification Format - All Information Remains Classified.

I, (*rank/grade and name*) am the initial classification authority (*or)* the successor to the original initial classification authority (*or)* the declassification authority for (*give an unclassified description of the records concerned)*. In consultation with (*FOIA office*), I have assessed the FOIA request of (*requester's name*), our ##### (*FOIA identifier*), for records that were properly classified at the time of their creation and currently remain properly classified in accordance with Executive Order 12958 (*or)* contain information that we have determined is classified in accordance with Executive Order 12958 Section 1.5 (_) (*OR)* in accordance with Executive Order 12958 Section1.5(_) and is also exempt from declassification in accordance with Section 1.6(_) of the Executive Order (*OR IF THE RECORD IS MORE THAN 25 YEARS OLD*) contain information that we have determined is exempt from declassification in accordance with Executive Order 12958 Section 3.4(b)(_). Unauthorized release could cause (*for TOP SECRET, use* exceptionally grave; *for SECRET use* serious; *for CONFIDENTIAL do not add language; should read* cause damage*)* damage to national security. There are no reasonably segregable portions that we can release. Consequently release of this information is denied pursuant to 5 U.S.C. Section 552(b)(1).

Signature

(*Date Signed*) (*Signature Block*)

AP7.14.2. Sample Certification Format - Portions Remain Classified.

I, (*rank/grade and name*) am the initial classification authority (*OR)* the successor to the original initial classification authority (*OR)* the declassification authority for (*give an unclassified description of the records concerned.)* In consultation with (*FOIA office*), I have assessed the FOIA request of (*requester's name*), our ##### (*FOIA identifier*), that asked for records, (*OR)* portions of which were properly classified at the time of their creation. Portions of the records currently remain properly classified in accordance with Executive Order 12958. The bracketed information is currently and properly classified in accordance with Section 1.5 *(add appropriate subparagraph*), Executive Order 12958, and is also exempt from declassification in accordance with Section 1.6(_) of the Executive Order (*OR IF THE RECORD IS MORE THAN 25 YEARS OLD)* contain information that we have determined

is exempt from declassification in accordance with Executive Order 12958 Section 3.4(b)(_). Unauthorized release could cause (*for TOP SECRET use* exceptionally grave; *for SECRET use* serious; *for CONFIDENTIAL do not add language; should read* cause damage*)* damage to national security. There are no other reasonably segregable portions that we can release. Consequently this information is denied pursuant to 5 U.S.C. Section 552(b)(1).

Signature

(*Date Signed*) (Signature Block)

AP7.15. LETTER TO A REQUESTER WHO HAS WITHDRAWN THEIR REQUEST OR APPEAL (*If a FOIA requester has withdrawn a FOIA request or appeal, sending a final letter to the requester to close the file may be wise. Suggested language to the requester follows).*

We received your Freedom of Information Act (FOIA) request (*OR)* appeal dated ## Month year, on ## Month year (*date received*). After sending us your request (*OR)* appeal, you indicated by (*facsimile, letter*) that you wished to withdraw your request (*OR)* appeal. We have, therefore, closed your file without further action.

AP7.16. LETTER TO A REQUESTER WHO HAS APPEALED AFTER THE 60-DAY DEADLINE (*We will not process FOIA appeals received after the 60-day time limit, unless the requester provides adequate justification for failing to comply. If you receive a late appeal, and it gives inadequate justification for failing to comply, the FOIA office will advise the requester their appeal was closed; suggested language for a letter to an untimely requester follows.)*

We received your Freedom of Information Act (FOIA) appeal dated ## Month year, on ## Month year (*date received*). You did not appeal within 60 days of the postmarked date of our denial letter as outlined in our agency regulation. Therefore, we are closing our file.

AP7.17. LETTER TO A REQUESTER WHO HAS APPEALED (*There are occasions when, on reconsideration, an IDA grants all or part of an appeal. When sending their appeal to higher headquarters, notify the requester. Suggested language to a requester who has appealed follows).*

We received your Freedom of Information Act (FOIA) appeal, our number #####, dated ## Month year, on ## Month year (*date received*). We considered the issues raised in your appeal carefully. We have decided to grant (*OR)* partially grant your appeal.

(If you grant all or part of the appeal): Upon reconsideration, we are releasing the requested records (*OR)* granting your request. (*If the appeal is only partially granted, describe what portions remain in dispute).* (*If applicable):* We are releasing and attaching all *or* portions of the responsive

records. (*If applicable)*: We will continue processing your appeal for the remaining withheld [records/ information].

AP7.18 (Added)(AFSPC) SAMPLE LETTER NOTIFYING INDIVIDUAL OF A REQUEST FOR HIS/HER RECORDS.

A Freedom of Information Act (FOIA) request relating to you was received in this office on (date). Request was for (type of record).

Please be assured that personal information protected by the Privacy Act will not be released to a third party. You will be notified of any information relating to you that is released under the FOIA.

If you have any questions, contact me at _____.

(ADDED)(AF) AP8. APPENDIX 8
RECORDS WITH SPECIAL DISCLOSURE PROCEDURES

AP8.1. General. Certain records have special administrative procedures to follow before disclosure. Selected publications that contain such guidance are listed below.

AP8.1.1. Air Force Guidance

AP8.1.1.1. AFI 16-701, *Special Access Programs*.

AP8.1.1.2. AFI 31-206, *Security Police Investigations*.

AP8.1.1.3. AFI 31-501, *Personnel Security Program Management*.

AP8.1.1.4. AFI 31-601, *Industrial Security Program Management*.

AP8.1.1.5. AFI 36-2603, *Air Force Board for Correction of Military Records*.

AP8.1.1.6. AFI 36-2706, *Military Equal Opportunity and Treatment Program*.

AP8.1.1.7. AFI 36-2906, *Personal Financial Responsibility*.

AP8.1.1.8. AFI 36-2907, *Unfavorable Information File (UIF) Program*.

AP8.1.1.9. AFI 40-301, *Family Advocacy*.

AP8.1.1.10. AFI 41-210, *Patient Administration Functions*.

AP8.1.1.11. AFI 44-109, *Mental Health and Military Law*.

AP8.1.1.12. AFI 51-201, *Administration of Military Justice*.

AP8.1.1.13. AFI 51-301, *Civil Litigation*.

AP8.1.1.14. AFI 51-303, *Intellectual Property-Patents, Patent Related Matters, Trademarks, and Copyrights*.

AP8.1.1.15. AFI 51-501, *Tort Claims*.

AP8.1.1.16. AFI 51-503, *Aircraft, Missile, Nuclear and Space Accident Investigations*.

AP8.1.1.17. AFI 51-504, *Legal Assistance, Notary and Preventive Law Programs*.

AP8.1.1.18. AFI 51-1102, *Cooperation with the Office of the Special Counsel*.

AP8.1.1.19. AFI 61-204, *Disseminating Scientific and Technical Information*.

AP8.1.1.20. AFI 61-303, *Licensing Inventions Made Under Cooperative Research and Development Agreements.*

AP8.1.1.21. AFI 71-101, Volume 1, *Criminal Investigations*, and Volume 2, *Protective Service Matters.*

AP8.1.1.22. AFI 84-101, *Historical Products, Services, and Requirements*.

AP8.1.1.23. AFI 90-301, *Inspector General Complaints*.

AP8.1.1.24. AFI 91-204, *Safety Investigations and Reports*.

(ADDED)(AF) AP9. APPENDIX 9

ADMINISTRATIVE PROCESSING OF AIR FORCE FREEDOM OF INFORMATION ACT REQUESTS

AP9.1. General. This appendix is a checklist format of processing steps and explanations of Air Force and DoD guidance. Each MAJCOM may elect to prepare its own checklists to tailor FOIA processing actions within its own organizations to meet their specific needs, so long as it remains consistent with guidance contained in DoD 5400.7-R and this supplement.

AP9.2. Procedures: Freedom of Information Act Requests

AP9.2.1. Note the date the request was received, give the request a unique identifier/number, and log the request.

AP9.2.2. Assess the request to determine initial processing requirements:

AP9.2.2.1. Determine what Air Force elements may hold responsive records.

AP9.2.2.1.1. Are responsive records kept at the same or different installations?

AP9.2.2.1.2. Is referral of *(all/part)* of the request required?

AP9.2.3. Determine appropriate processing track *(simple/complex/expedited)*. *(Air Force FOIA offices without backlogs do not multitrack FOIA requests.)* **NOTE:** Requesters have a right to appeal an adverse tracking decision (for example, when it is determined their request will not be expedited.) Also, if their request qualifies for the complex track, tell requesters so they may limit the scope of their request in order to qualify for the simple track. FOIA managers must assess a request before placing it into a specific processing track, and must support their actions should the requester appeal. If a request is determined to be complex, or is not expedited when the requester sought expedited processing, you must advise the requester of the adverse tracking decision in writing. See Appendix 7 for sample language for this kind of letter to a requester.

AP9.2.3.1. Simple - defines a request that can be processed quickly, with limited impact on the responding units. The request clearly identifies the records, involves no (or few) complicating factors (e.g., there are few or no responsive records, involves only one installation and there are no outside OPRs, involves no classified records [Exemption 1], a law exempts the responsive records from disclosure [Exemption 3], no contractor-submitted records [Exemption 4], no deliberative

process/privileged materials [Exemption 5], records contain no [or limited] personal privacy information/did not come from Privacy Act systems of records concerning other individuals [Exemption 6], release of records would have minimal impact on law enforcement [Exemption 7]; no time extensions expected, other than the additional 10-workdays allowed in situations outlined in the FOIA). If the requested data must come from electronic records, response can be completed on a "business-as-usual" basis; requires no (or limited) reprogramming of automated information systems and would cause no significant interference with operation of information systems by processing a simple request/providing a response in the electronic format requested.

AP9.2.3.2. Complex - defines a request whose processing will take substantial time, will cause significant impact on responding units. Complications and delays are likely (e.g., the request is vague (poor description of records, unclear who or when records were created), records are massive in volume, multiple organizations will receive tasking, records are classified [Exemption 1], records came from another command/service/a nongovernment source [Exemption 4], records are part of the Air Force's decision-making process, and not incorporated into a final decision [IG/audit reports, legal opinions, misconduct or mishap investigations etc.] or are attorney-client records [Exemption 5], records are largely personal information on another individual or came from Privacy Act systems of records [Exemption 6], records describe law enforcement activities or information from [and/or identities of] confidential sources [Exemption 7]; response cannot be completed on a "business as usual" basis and would require extensive reprogramming or cause significant interference with operation of the automated information systems. (Advise requester, in writing, of right to limit the scope of their request in order to qualify for simple track.)

AP9.2.3.3. An expedited request is when a requester asks for expedited processing and explains the compelling need (imminent threat to life or physical safety; urgently needed by a person primarily engaged in disseminating information; due process; or humanitarian need) for the requested information. In order to receive expedited processing, requesters must provide a statement certifying their "demonstration" (description) of their specific "compelling need" or due process/humanitarian need is true and correct to the best of their knowledge. When a requester seeks expedited processing, FOIA offices must respond in writing to the requester within 10 calendar days after receipt of the request approving or denying their request for expedited processing. Requesters have a right to appeal an adverse decision (e.g., when it is determined their requests will not be expedited). There are four categories of FOIA requests that qualify for expedited processing:

AP9.2.3.3.1. The requester asserts a "compelling need" for the records, because a failure to obtain records quickly could reasonably be expected to pose an imminent threat to the life or physical safety of an individual.

AP9.2.3.3.2. The requester asserts a "compelling need" for the records, because the information is *"urgently needed"* by an individual engaged in disseminating information to inform the public (primarily news media requesters; and could also include other persons with the ability to disseminate information) **NOTE:** *"Urgently needed,"* in this case, means the information has a particular value that will be lost if it is not disseminated quickly. This normally would apply to a breaking news story of general public interest. Information of historical interest only, or sought for litigation or

commercial activities would not qualify, nor would the fact a news media entity had an internal broadcast deadline of its own, which was unrelated to the "news breaking nature" of the information itself, cause the requested information to qualify as *"urgently needed."*

AP9.2.3.3.3. Failure to obtain records quickly could cause imminent loss of substantial due process rights *OR* providing the information quickly would serve a "humanitarian need" (i.e., disclosing the information will promote the welfare and interests of mankind). While FOIA requests falling into these third and fourth categories can qualify for expedited processing, process them in the expedited track behind the requests qualifying for expedited processing based on "compelling need" (the first two types of expedited FOIA requests).

AP9.2.4. Determine fee category of requester (Commercial/Educational—Noncommercial Scientific Institution—News Media/All Others) and assess fee issues. When all assessable costs are $15.00 or less, waive fees automatically for all categories of requesters. Assess other fee waiver or reduction requests on a case-by-case basis. See Chapter 6.

AP9.2.5. Apply fee waiver/fee reduction criteria in appropriate cases (when requester asks for fee waiver/reduction). See Chapter 6, paragraph C6.1.4.

AP9.2.6. Find the Responsive Air Force Records (if any).

AP9.2.6.1. Send the request to the appropriate OPRs to search for responsive records and to decide whether to recommend release of any responsive records. Include a DD Form 2086, or a DD Form 2086-1, in each request. The OPR must complete and return the appropriate forms and statements to the FOIA office.

AP9.2.6.1. (AFSPC) An AFSPC Form 58 will accompany each case file sent to OPRs.

AP9.2.6.2. If the OPRs find no responsive records, or if the OPRs desire to withhold any responsive records from release to the requester, the OPRs must provide a written certificate detailing either their unsuccessful search, or their reasons why the documents should be withheld from release under the FOIA; the written OPR statements must accompany the copies of the records the OPR desires to withhold as the FOIA action is processed (e.g., include it in any denial or appeal file). **NOTE:** If any part of a FOIA request is denied, and the requester appeals that denial, include all forms, certificates and documents prepared by the OPRs in the FOIA appeal package in Tab 5 (see paragraph AP9.5).

AP9.2.6.2.1. (Added)(AFSPC) OPRs provide rationale for “no record” response. For example, “record was destroyed IAW disposition instruction” or “record was never created because a situation or action did not require it”, etc.

AP9.2.6.2.2. (Added)(AFSPC) A statement or letter in format required by local FOIA Manager certifying that OPR conducted a thorough search for responsive records will be maintained in the FOIA case file.

AP9.2.7. (Added)(AFSPC) Coordinate responses with:

AP9.2.7.1. (Added)(AFSPC) OPRs involved in the review process.

AP9.2.7.2. (Added)(AFSPC) SJA for partial or total denials and for total releases if required by your wing SJA office.

AP9.2.7.3. (Added)(AFSPC) Information Security Office when classified material is involved.

AP9.2.7.4. (Added)(AFSPC) Operations Security Officer when request is for operations or planning records.

AP9.2.7.5. (Added)(AFSPC) Command Congressional Liaison Office for congressional (non-IG) inquiries. (Telephonic coordination with HQ AFSPC/XPPL is acceptable.)

AP9.3. Contacts with Freedom of Information Act Requesters and Non-Air Force Submitters of Data

AP9.3.1. Contacts with Air Force Elements. A FOIA request is considered "received" (and therefore ready to process) when the FOIA office responsible for processing the request physically receives it, when the requester states a willingness to pay fees set for the appropriate fee category, or, if applicable, when the requester has paid any past FOIA debts and has reasonably described the requested records. Keep hard/paper copies of all memoranda documenting requester contacts with Air Force elements regarding a pending FOIA request in the requester's FOIA file. If the requester contacts Air Force elements telephonically about a pending FOIA request, the Air Force member participating in the conversation must prepare notes or memorandums for record (MFR), and keep those notes or MFRs in the requester's FOIA file. If any part of a FOIA request is denied, and the requester appeals that denial, submit documentation of requester contacts with Air Force elements in chronological order in the FOIA appeal package in Tab 1 (see paragraph AP9.5).

AP9.3.1.1. (Added)(AFSPC) Obtain advance payment prior to processing requests from requesters in “bad credit” status when the amount exceeds $15.00.

AP9.3.1.2. (Added)(AFSPC) Do not process requests from requesters in “bad debt” status. Contact HQ AFSPC/SCMI (FOIA) to confirm status. Notify requester that no action will be taken to process their request nor any future request until the debt is paid.

AP9.3.1.3. (Added)(AFSPC) Notify HQ AFSPC/SCMI (FOIA) by letter or telecon when payment is received from a requester in “bad debt” status.

AP9.3.1.4. (Added)(AFSPC) Command FOIA office distributes bad debt/bad credit listings as required. If a branch office of a company/agency is in bad debt/bad credit status, the entire company/agency assumes this status.

AP9.3.2. Contacts with the FOIA Requester. See Appendix 7 for samples of language to use in various types of Air Force FOIA letters. If any part of a FOIA request is denied, and the requester appeals that denial, submit documents sent by Air Force elements to the requester (except for the denial letter, which will be in Tab 3) in the FOIA appeal package in Tab 5 in chronological order (see paragraph AP9.5). Letters that Air Force FOIA offices may need to send to a FOIA requester include:

AP9.3.2.1. An initial notification letter that the FOIA request was received.

AP9.3.2.1.1. This letter may advise the requester that processing of the FOIA request may be delayed because:

AP9.3.2.1.1.1. All or part of the requested records are not located at the installation processing the FOIA request (see paragraph AP9.3.2.2).

AP9.3.2.1.1.2. An enormous number of records must be collected and reviewed.

AP9.3.2.1.1.3. Other Air Force activities or other agencies, to include (if applicable) the nongovernment submitter of information, need to be involved in deciding whether or not to release the records.

AP9.3.2.1.1.4. If you cannot complete processing of a FOIA request within 20 workdays, advise the requester of the reasons for the delay and give a date (within 30 workdays after receiving the request) when the requester can expect a final decision.

AP9.3.2.1.1.4. (Added)(AFSPC) OPR submits request for time extension in writing to the installation or unit FOIA office, as applicable. Include sufficient justification to support extension.

AP9.3.2.2. The initial notification letter may advise the requester all/part of the request was referred to another Air Force element or government activity.

AP9.3.2.3. The initial notification letter may advise the requester of the appropriate fee category. In cases where fees are appropriate, and requesters have not agreed to pay for responsive records and fees are likely to be more than $15.00, seek assurances that the requester agrees to pay appropriate fees. If more information is needed to make a fee category determination, or to determine whether fees should be waived/reduced, inform the requester. FOIA offices may determine fee waiver/reduction requests before processing a FOIA request; if a fee waiver/reduction request is denied, the requester may appeal that denial; he/she may also appeal an adverse fee category determination (e.g., asked for news media fees, but was assessed commercial fees.)

AP9.3.2.3.1. (Added)(AFSPC) Take no action to process the request or sanitize requested records until receipt of an agreement to pay a specific amount when chargeable fees exceed $15 and requester has not specified agreement to pay a specific amount. Include as the last sentence of your letter the following statement: "From the date of this letter we will take no further action on your request until receipt of an agreement to pay the specified amount. At that time, our initial 20 workdays to process your request will begin again."

AP9.3.2.3.2. (Added)(AFSPC) Calculate chargeable fees using costs shown on the DD Form 2086, **Record of Freedom of Information (FOI) Processing Cost**, completed by the OPR for the requested records when requesting advance payment or an agreement to pay.

AP9.3.2.4. The initial notification letter may advise the requester the request does not sufficiently describe the desired records. If possible, help the requester identify the requested records by explaining what kind of information would make searching for responsive records easier.

AP9.3.2.5. If Air Force elements can complete a FOIA request within the statutory 20-workday processing period, you may elect to send only a single letter to the requester, along with responsive records that are released to the requester in full.

AP9.3.2.6. A letter to the requester that the responding FOIA office uses multitrack processing due to a significant number of pending requests that prevents a response determination from being made within 20 workdays. This letter advises the FOIA requester that track the request is in (simple/complex); in this letter, if expedited processing was requested, the requester is advised if the request will be expedited or not. If the request is found to be complex, you must advise the requester he/she may alter the FOIA request to simplify processing. If it is determined the request will not be expedited, the requester must be told he/she can appeal. (This may be the initial letter to the requester, for Air Force elements with multitrack processing; if that is the case, this letter may include sections discussed in paragraph AP9.3.2.1.)

AP9.3.2.7. Subsequent letters to the requester on various subjects (for example, releasing requested records; advising reasons for delays; responding to the letters, facsimiles or calls; advising the requester of referrals to other Air Force units or government activities; involves a non-Air Force submitter, etc.).

AP9.3.2.7.1. (Added)(AFSPC) Provide FOIA Office with two copies of records approved for total release. If OPR agrees, in writing, to maintain a copy of the totally releasable record for the required retention period IAW AFMAN 37-139, Table 39, Rule 24, only one copy for release to the requester is required. (***Note***: This provision applies only when the releasable record is voluminous or when sensitive information must be “close-hold”.)

AP9.3.2.7.2. (Added)(AFSPC) Records are considered totally releasable when requester indicates an agreement to the deletion of information and does not ask to be advised of the exemptions used for withholding information. Delete data in the usual manner. Do not annotate exemptions nor give appeal rights.

AP9.3.2.8. A release letter to the requester, forwarding releasable responsive records with a bill (if appropriate).

AP9.3.2.9. A "no records" response letter to the requester if there are no responsive records, or, a denial letter, if any responsive records are withheld from release. FOIA managers may sign "no records" or "requested format not available" responses; they may also sign a letter that advises a requester the fee category sought was not determined to be appropriate, or that a fee waiver/fee reduction request was disapproved, or that a request for expedited processing has been denied. An IDA must sign any letter or document withholding responsive records. When denying records, you must tell the requester, <u>in writing</u>: the name and title or position of the official who made the denial determination, the basis for the denial in enough detail to permit the requester to make a decision concerning appeal, and the FOIA exemptions on which the denial is based. The denial letter must include a brief statement describing what the exemptions cover. When the initial denial is based (in whole or in part) on a security classification, this explanation should include a summary of the applicable executive order criteria for classification, as well as an explanation of how those criteria apply to the particular record in question. Estimate the volume of the records denied and provide this estimate to the requester,

unless providing such an estimate would harm an interest protected by an exemption of the FOIA. This estimate should be in number of pages or, for records in other media, in some other reasonable form of estimation, unless the volume is otherwise indicated through deletions on records disclosed in part. Indicate the size and location of the redactions on the records released. You must also tell the requester how he/she can appeal the denial.

AP9.3.2.9. (Added)(AFSPC) A statement or letter in format required by local FOIA Manager certifying that OPR conducted a thorough search for responsive records will be maintained in the FOIA case file.

AP9.3.3. Contacts with Non-Air Force Submitters of Data. Before releasing data (information or records) submitted from outside the Air Force, determine whether you need to write to the submitter of the data for their views on releasability of their data. In many cases, this non-Air Force data may fall under FOIA Exemption 4. If it appears you must contact the submitter of the data, advise the requester in writing that you 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 (30 calendar days) to object to release and provide justification for withholding the documents. If the submitter does not respond, advise the submitter in writing that you have not received a reply and plan to release the records. Provide the submitter with the reasons the Air Force will release the records, and give the submitter your expected release date (at least 2 weeks from the date of your letter). This permits the submitter time to seek a temporary restraining order (TRO) in federal court, if they can convince the judge to issue such an order. See Appendix 7 for samples of language to use in Air Force letters to both the FOIA requester and nongovernment submitters. Remember to include a copy of Appendix 11 as an attachment to the letter sent to the nongovernment submitter.

AP9.3.3.1. The notice requirements of this section need not be followed if the Air Force determines that the information should not be disclosed, the information has been lawfully published or officially made available to the public, or disclosure of the information is required by law.

AP9.3.3.2. If the submitter objects to release of the records, but the Air Force disclosure authority considers the records releasable, tell the submitter before releasing the data. Include in the letter to the submitter a brief explanation and a specific release date at least 2 weeks from the date of the letter. Advise the submitter once a determination is made that release of the data is required under the FOIA, failure to oppose the proposed release will lead to release of submitted data. Also advise the requester such a release under the FOIA will result in the released information entering the public domain, and that subsequent requests for the same information will be answered without any formal coordination between the Air Force and the submitter, unless the information is later amended, changed, or modified. A person equal to, or higher in rank than, the denial authority makes the final decision to disclose responsive records over the submitter's objection.

AP9.3.3.2. (Added)(AFSPC) Use sample letter at AP 7.13.3.2. to notify submitter of determination to release information over their objection.

AP9.3.3.3. When a previously released contract document has been modified, any contract documents not in existence at the time of an earlier FOIA request that are responsive to a later FOIA request for the same contract, will be processed as a first-time FOIA request for those newly created documents. Notify the nongovernment submitter of the pending FOIA action, and give them the same opportunity to respond as is detailed above. Passage of a significant period of time since the prior FOIA release can also require Air Force elements to comply with the notice requirements in this paragraph.

AP9.4. Denying All or Part of a Request. When responsive records are withheld from release (denied), the appropriate offices must prepare a denial package for the IDA. Air Force elements must send the request, related documents, and responsive records through their IDA's FOIA office to the IDA for a decision. The denial package must include:

AP9.4.1. The FOIA request and any modifications by the requester.

AP9.4.2. A copy of the responsive records, including both records that may be released and records recommended for denial.

AP9.4.2.1. (Added)(AFSPC) Total Denial. One unsanitized copy.

AP9.4.2.2. (Added)(AFSPC) Partial Denial. One unsanitized copy with data to be withheld bracketed or highlighted using a reproducible highlighter. Annotate applicable FOIA exemption in the margin. Additionally, provide one sanitized copy for release to the requester.

AP9.4.3. Written recommendations from the OPRs and an Air Force attorney.

AP9.4.3. (AFSPC) FOIA Manager makes sure OPR response addresses each item requested. OPR contacts MAJCOM counterpart for guidance, if needed.

AP9.4.4. The exemptions cited and a discussion of how the records qualify for withholding under the FOIA.

AP9.4.4.1. This discussion should also include the reasons for denial: to deny release of responsive records requested under the FOIA, you must determine that disclosure of the records would result in a foreseeable harm to an interest protected by a FOIA exemption (or exemptions), that the record is exempt from release under one or more of the exemptions of the FOIA, and that a discretionary release is not appropriate.

AP9.4.5. Any collateral documents that relate to the requested records. For example:

AP9.4.5.1. If the requested records came from a non-Air Force or non-U.S. Federal Government submitter, include any documents from the submitter that relate to the release or denial of the requested records. If you are not sure whether or not the non-Air Force or non-U.S. Federal Government submitted information is potentially exempt from release under the FOIA, contact an Air Force attorney. FOIA Exemptions 3, 4, 5, 6, and 7 may apply.

AP9.4.5.2. If the requested records came from Privacy Act systems of records, include a written discussion of any Privacy Act issues.

AP9.4.5.3. If any requested records came from another Air Force element, or release of the requested records would affect another Air Force element, FOIA offices should coordinate with that other element. If the FOIA request is not completely referred to the other element, include documents from that element.

AP9.4.5.4. If any requested records are classified, include a written certification from a classification authority or declassification authority stating the data was properly classified originally, that it remains properly classified (per Executive Order 12958), and, if applicable, that no reasonably segregable portions can be released (see paragraph C3.2.1.1).

AP9.4.5.5. (Added)(AFSPC) Also include copies of administrative processing documents in the denial package, to include as a minimum:

AP9.4.5.5.1. (Added)(AFSPC) Time extension letter(s).

AP9.4.5.5.2. (Added)(AFSPC) Copies of all correspondence to and from OPR.

AP9.4.5.5.3. (Added)(AFSPC) Copies of all correspondence to and from requester.

AP9.4.5.5.4. (Added)(AFSPC) Consolidated DD Form 2086.

AP9.4.5.5.5. (Added)(AFSPC) Copy of DD Form 1131, **Cash Collection Voucher**, for any fees collected and deposited.

AP9.4.5.5.6. (Added)(AFSPC) Submitter's letter, when required, providing sufficient justification for withholding data when citing Exemption (b)(4).

AP9.5. Freedom of Information Act Appeal Actions

AP9.5. (AFSPC) Forward appeals to HQ AFSPC/SCMI (FOIA) with attachments identified and assembled IAW paragraph AP9.5.4.

AP9.5.1. If an IDA, or a FOIA office responding on behalf of an IDA, withholds a record from release because they determine the record is exempt under one or more of the exemptions to the FOIA, the requester may appeal that decision, in writing, to the Secretary of the Air Force. The appeal should be accompanied by a copy of the denial letter. FOIA appeals should be postmarked within 60 calendar days after the date of the denial letter, and should contain the reasons the requester disagrees with the initial denial. Late appeals may be rejected, either by the element initially processing the FOIA appeal, or by subsequent denial authorities, if the requester does not provide adequate justification for the delay.. Appeal procedures also apply to the denial of a fee category claim by a requester, denial of a request for waiver or reduction of fees, disputes regarding fee estimates, review on an expedited basis of a determination not to grant expedited access to agency records, and for "no record" or "requested format not available" determinations when the requester considers such responses adverse in nature.

AP9.5.2. Coordinate appeals with an Air Force attorney (and the OPR, if appropriate) so they can consider factual and legal arguments raised in the appeal, and can prepare written assessments of issues raised in the appeal to assist the IDA in considering the appeal. MAJCOM FOIA offices and 11 CS/SCSR (for OPRs at HQ USAF and SAF), send all appeals to the Secretary of the Air Force through AFLSA/JACL for consideration, unless the IDA has reconsidered the initial denial action, and granted the appeal.

AP9.5.3. If a requester appeals a "no records" determination, organizations must search again or verify the adequacy of their first search (for example, if a second search would be fruitless, the organization may include a signed statement from either the records OPR or the MAJCOM FOIA manager detailing why another search was not practical). The appeal package must include documents (to include a certification from the records OPR) that show how the organization tried to find responsive records. In the event a requester sues the Air Force to contest a determination that no responsive records exist, formal affidavits will be required to support the adequacy of any searches conducted.

AP9.5.4. General Administrative Matters. FOIA requesters may ultimately sue the Air Force in federal court if they are dissatisfied with adverse determinations. In these suits, the contents of the administrative appeal file are evaluated to determine whether the Air Force complied with the FOIA and its own guidance. Improper or inadequate appeal files make defending these cases problematic. Include all the documents related to the requester's FOIA action in the appeal file. If appeal file documents are sensitive, or are classified up to the SECRET level, send them separately to AFLSA/JACL, 1501 Wilson Boulevard, 7th Floor, Arlington VA 22209-2403. Make separate arrangements with AFLSA/JACL for processing classified appeal file documents TOP SECRET or higher. Cover letters on appeal packages

need to list all attachments. If a FOIA action is complicated, a chronology of events helps reviewers understand what happened in the course of the request and appeal. If an appeal file does not include documentation described below, include the tab, and insert a page marked "not applicable," "N/A," or "not used." DO NOT just renumber the tabs and move the other items up. If any part of the requester's appeal is denied, the appeal package must include a signed statement by the IDA, demonstrating the IDA considered and rejected the requester's arguments, and the basis for that decision. This may be a separate memorandum, an endorsement on a legal opinion or OPR opinion, or the cover letter which forwards the appeal for final determination. Include in the cover letter forwarding the appeal to the Secretary of the Air Force the name, phone number and e-mail address (if any) of the person to contact about the appeal. The order and contents of appeal file attachments follow.

AP9.5.4.1. The original appeal letter and envelope.

AP9.5.4.2. The initial FOIA request, any modifications of the request by the requester or any other communications from the requester, in chronological order.

AP9.5.4.3. The denial letter.

AP9.5.4.4. Copies of all records already released. (An index of released documents may be helpful, if there are a number of items. If the records released are “massive” [which means "several cubic feet"] and AFLSA/JACL agrees**,** an index or description of the records may be provided in place of the released records. Do not send appeal files without copies of released records without the express agreement of AFLSA/JACL. Usually AFLSA/JACL requires all the released records in appeal files. If you do not send the released records to AFLSA/JACL when a FOIA requester has appealed a partial denial, retain a copy of what was released for 6 years.)

AP9.5.4.5. Copies of all administrative processing documents, including extension letters, search descriptions, and initial OPR recommendations about the request, in chronological order.

AP9.5.4.6. Copies of the denied records or portions marked to show what was withheld. If your organization uses a single set of highlighted records (to show items redacted from records released to the requester), ensure the records are legible and insert a page in either Tab 4 or Tab 6 stating all records are contained in the other tab. (An index of denied documents may be helpful, if there are a number of items. If the records denied are “massive” [which means "several cubic feet"] and AFLSA/JACL agrees**,** an index or description of the records may be provided in place of the denied records. Do not send appeal files without copies of denied records without the express agreement of AFLSA/JACL. Usually AFLSA/JACL requires all the denied records in appeal files. If you do not send the denied records to AFLSA/JACL, when a FOIA requester has appealed a denial, retain a copy of what was denied for 6 years.)

AP9.5.4.7. Place all legal opinions, in chronological order, in this tab. Include a point-by-point discussion of factual and legal arguments in the requester's appeal (prepared by an Air Force attorney and/or the OPR). If the IDA does not state in the cover letter he/she signed, that he/she considered and rejected the requester's arguments, asserting the basis for that decision (e.g., the IDA concurs in the legal and/or OPR assessments of the requester's arguments) include a signed, written statement containing the same information from the IDA in this tab, either as a separate document or an endorsement to a legal or OPR assessment. Include any explanation of the decision-making process for intra-agency documents denied under the deliberative process privilege and how the denied material fits into that process (if applicable).

(ADDED)(AF) AP10. APPENDIX 10

FREEDOM OF INFORMATION ACT EXEMPT INFORMATION EXAMPLES

AP10.1. General. Certain responsive records may contain parts that are releasable, along with other parts that the Air Force must withhold from release. Carefully delete information exempt from release under the FOIA from copies of otherwise releasable records. Do not release copies that would permit the requester to "read through the marking." In order to assist FOIA managers in redacting records, selected items appropriate to withhold in commonly requested Air Force records are illustrated below. (*Italicizing* denotes exempt information.)

AP10.2. Exemption 1. Example used is an extract from a "simulated" contingency plan (all information below is fictional and UNCLASSIFIED; markings are used for illustrative purposes only).

AP10.2.1. (U) Air Force members will safeguard all FELLOW YELLOW data (**NOTE:** FELLOW YELLOW simulates an UNCLASSIFIED code name*).*

AP10.2.2. ~~(S)~~ *During the contingency deployment in Shambala, those members assigned to force element* FELLOW YELLOW *will cover their movements by employing specified camouflage and concealment activities while behind enemy lines. Only secure communications of limited duration as specified in the communications annex will be employed until* FELLOW YELLOW *personnel return to base*. (Exemption 1)

AP10.3. Exemption 2. Example used is an extract from a "simulated" test administration guide (all information below is fictional; information and marking is used for illustrative purposes only).

When administering the test to determine which technicians are ranked fully qualified, make sure to allow only the time specified in HQ AETC Pamphlet XYZ, which the technicians were permitted to review as part of their test preparation. For ease in scoring this exam, correct answers are *A, A, B, B, A, B, C, C, A, B, D, D, C, C, C, D*; the corresponding template for marking the standard answer sheet is kept locked up at all times when not in use to grade answer sheets. (Exemption "high" 2)

AP10.4. Exemption 5. Example used is a simulated IG Report of Investigation (ROI) recommendation (all information below is fictional; information and marking is used for illustrative purposes only):

Having interviewed the appropriate personnel and having reviewed the appropriate documents, *I recommend additional training sessions for all branch personnel on accepted Air Force standards, and the Air Force pursue administrative or judicial disciplinary action with respect to Terry Hardcase.* (Exemption 5)

AP10.5. Exemption 6. Example used is a simulated personnel computer report on a military member selected for a special assignment [all information below is *fictional*; information and marking is used for illustrative purposes only.]:

SSgt Doe, Kerry E.	SSN: *111-11-1112*	Date of Birth: *22 Jun 71*
Duty Title: Special Assistant to CINCPAC	Office Symbol: CINCPAC/CCSA	
Duty Station: Hickam AFB HI 11111-1111	Date Assigned: 12 June 1998	
Marital Status: *Divorced*	Dependents: *01*	Home Address: *12 Anystreet, Downtown ST 11112*
Home Phone: *(112) 223-3344* [Exemption 6]		

AP10.6. Exemption 7. Example used is summary of a law enforcement report on a domestic disturbance at on-base family housing (all information below is fictional; information and marking is used for illustrative purposes only):

At 2140, the law enforcement desk, extension 222-3456, took an anonymous call that reported a disturbance at *1234 Basestreet*, quarters allegedly occupied by two military members. *SrA Patrolman {names of law enforcement investigators usually are withheld under Exemptions 6 and 7(C)}* arrived on the scene at 2155. *SrA Patrolman* met *Nora Neighbor, {names of witnesses usually are withheld under Exemptions 6 and 7(C)}* who was very agitated. Because *she* feared *her* neighbors would retaliate against *her* if *they* knew *she* reported *their* fight, *she* asked that *her* name not be released before *she* would talk. After *she* was promised *her* identity would remain anonymous, *she* stated: *{Nora Neighbor became a confidential informant; data that could identify her, and in some cases, the information she related, should be withheld from release under Exemptions 6, 7(C) and (D).}* "I heard cursing and heard furniture and dishes breaking. *They* fight all the time. *I've* seen *Betty Battle {unless Betty is the requester, redact her name Exemptions 6 and 7(C)}* with a black eye, and *I* also saw *Bob Battle {unless Bob is the requester, redact his name Exemptions 6 and 7(C)}* with bruises the day after *they* had *their* last fight, last Saturday night. This time, there was a tremendous crash; *I* heard a *man* scream "My Lord NO!" then *I* saw *Betty Battle* come out of the house with dark stains on *her* clothes—*she* got into *her* car and drove away. *I* could see this really well, *because the streetlight is right between our houses; I'm the wife of their NCOIC*. If only *Nick, my husband*, was here now, *he'd* know what to do! *I* haven't heard anything from *Bob Battle*." (Exemptions 6 and 7)

(ADDED)(AF) AP11. APPENDIX 11

REQUIREMENTS OF TITLE 5 UNITED STATES CODE SECTION 552(b)(4)
TO SUBMITTERS OF NONGOVERNMENT CONTRACT-RELATED INFORMATION

AP11.1. General. The FOIA requires federal agencies to provide their records, except those specifically exempted, for the public to inspect and copy. Section (b) of the Act lists nine exemptions that are the only basis for withholding records from the public.

AP11.1.1. 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 must withhold trade secrets and commercial or financial information they obtained from a person or organization outside the government that is privileged or confidential. This generally includes information provided and received during the contracting process with the understanding that the Air Force will keep it privileged or confidential.

AP11.1.2. Commercial or financial matter is "confidential" and exempt if its release will probably:

AP11.1.2.1. Impair the government's ability to obtain necessary information in the future.

AP11.1.2.2. Substantially harm the source's competitive position or impair some other legitimate government interest such as compliance and program effectiveness.

AP11.2. Applicability of Exemption. The exemption may be used to protect information provided by a nongovernment submitter when public disclosure will probably cause substantial harm to its competitive position. Examples of information that may qualify for this exemption include:

AP11.2.1. 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. (**NOTE:** Certain proprietary and source selection information may also fall under exemption (b)(3), under the provisions of 10 U.S.C. 2305(g) or 41 USC 423, if statutory requirements are met.)

AP11.2.2. 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.

AP11.2.3. 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.

AP11.2.4. 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.

AP11.2.5. 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.

AP11.2.6. 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 Title 10 U.S.C. 2320-2321 and Title 48 CFR.

AP11.2.7. Computer software copyrighted under the Copyright Act of 1976 (Title 17 U.S.C. 106), the disclosure of which would adversely impact its potential market value.

AP11.3. Submitter's Written Response. If release of the requested material would prejudice your commercial interests, give detailed written reasons that identify the specific information and the competitive harm public release will cause to you, your organization, or your business. The act requires the Air Force to provide any reasonably segregable part of a record after deleting exempt portions. If deleting key words or phrases would adequately protect your interests, advise us in writing which portions you believe we can safely release, and which portions you believe we need to withhold from release. If you do not provide details on the probability of substantial harm to your competitive position or other commercial interests, which would be caused by releasing your material to the requester, we may be required to release the information. Records qualify for protection on a case by case basis.

AP11.4. Pricing Information. Generally, the prices a contractor charges the government for goods or services would be released under the FOIA. Examples of releasable data include (a) bids submitted in response to an invitation for bids (IFB), (b) amounts actually paid by the government under a contract, and (c) line item prices, contract award price, and modifications to a contract. Unit prices contained in a contract award are considered releasable as part of the post award notification procedure prescribed by the Title 48 CFR unless they are part of an unsuccessful proposal, then 10 USC 2305(g) protects everything including unit price.

(ADDED)(AF) AP12. APPENDIX 12

GLOSSARY OF REFERENCES AND SUPPORTING INFORMATION

References

Title 5, United States Code, Section 552, The Freedom of Information Act, as amended

Title 5, United States Code, Section 552a, The Privacy Act (as amended)

Title 10, United States Code, Section 2305(g), Prohibition on Release of Contractor Proposals

Title 48, Code of Federal Regulations (CFR), Federal Acquisition Regulations (FAR) System

OMB Bulletin 95-01, 7 December 1994

OMB Memorandum, 6 February 1998

DoD 5200.1-R, *Information Security Program*, January 1997

AFI 16-701, *Special Access Programs*

AFI 31-206, *Security Police Investigations*

AFI 31-401, *Information Security Program Management*

AFI 31-501, *Personnel Security Program Management*

AFI 31-601, *Industrial Security Program Management*

AFI 33-129, *Transmission of Information Via the Internet*

AFI 35-205, *Air Force Security and Policy Review Program*

AFI 36-2603, *Air Force Board for Correction of Military Records*

AFI 36-2706, *Military Equal Opportunity and Treatment Program*

AFI 36-2906, *Personal Financial Responsibility*

AFI 36-2907, *Unfavorable Information File (UIF) Program*

AFPD 37-1, *Air Force Information Management* (will convert to AFPD 33-3)

AFI 37-124, *The Information Collections and Reports Management Program; Controlling Internal, Public, and Interagency Air Force Information Collections* (will convert to AFI 33-324)

AFI 37-132, *Air Force Privacy Act Program* (will convert to AFI 33-332)

AFMAN 37-139, *Records Disposition Schedule* (will convert to AFMAN 33-339)

AFI 40-301, *Family Advocacy*

AFI 41-210, *Patient Administration Functions*

AFI 44-109, *Mental Health and Military Law*

AFI 51-201, *Administration of Military Justice*

AFI 51-301, *Civil Litigation*

AFI 51-303, *Intellectual Property-Patents, Patent Related Matters, Trademarks, and Copyrights*

AFI 51-501, *Tort Claims*

AFI 51-503, *Aircraft, Missile, Nuclear and Space Accident Investigations*

AFI 51-504, *Legal Assistance, Notary and Preventive Law Programs*

AFI 51-1102, *Cooperation with the Office of the Special Counsel*

AFI 61-204, *Disseminating Scientific and Technical Information*

AFI 61-303, *Licensing Inventions Made Under Cooperative Research and Development Agreements*

AFI 65-401, *Relations With the General Accounting Office*

AFI 71-101, Volume 1, *Criminal Investigations*

AFI 71-101, Volume 2, *Protective Service Matters*

AFI 84-101, *Historical Products, Services, and Requirements*

AFI 90-301, *Inspector General Complaints*

AFI 90-401, *Air Force Relations With Congress*

AFI 91-204, *Safety Investigations and Reports*

Abbreviations and Acronyms

AFCA—Air Force Communications Agency

AFCIC—Air Force Communications and Information Center

AFRC—Air Force Reserve Command

AFI—Air Force Instruction

AFLSA/JACL—Air Force Legal Services Agency, General Litigation Division

AFMAN—Air Force Manual

AFPC/MSIMD—Air Force Personnel Center/Records Management, FOIA, and Privacy Act Office

AFPD—Air Force Policy Directive

ANG—Air National Guard

ASCII—American Standard Code for Information Interchange

CFR—Code of Federal Regulations

DFAS—Defense Finance and Accounting Service

DFOISR—Director, Freedom of Information and Security Review

DoD—Department of Defense

DRU—Direct Reporting Unit

EFOIA—Electronic Freedom of Information Act

ERR—Electronic Reading Room

FOA—Field Operating Agency

FOIA—Freedom of Information Act

FOUO—For Official Use Only

GAO—General Accounting Office

GILS—Government Information Locator Service

GPO—Government Printing Office

IDA—Initial Denial Authority

IG—Inspector General

IMPAC—International Merchant Purchase Authority Card

LOA—Letters of Offer and Acceptance

MAJCOM—Major Command

MFR—Memorandum for Record

NATO—North Atlantic Treaty Organization

NORAD—North American Aerospace Defense

NTIS—National Technical Information Service

OCR—Office of Corollary Responsibility

OMB—Office of Management and Budget

OPR—Office of Primary Responsibility

PA—Privacy Act

PAO—Public Affairs Office

PAS—Personnel Accounting Symbol

RCS—Reports Control Symbol

SAF—Secretary of the Air Force

SSN—Social Security Number

USAF—United States Air Force

U.S.C.—United States Code

WWW—World Wide Web

Terms

Appellate Authority—The Office of the General Counsel to the Secretary of the Air Force (SAF/GCA).

Denial—An adverse determination on no records, fees, expedited access, or not disclosing records.

Determination—The written decision to release or deny records or information that is responsive to a request.

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

Disclosure Authority—Official authorized to release records, normally division chiefs or higher.

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

FOIA Request—A written request for DoD records from the public that cites or implies the FOIA.

Functional Request—Any request for records from the public that does not cite the FOIA.

Government Information Locator Service (GILS)—An automated on-line card catalog of publicly accessible information.

Glomar Response—A reply that neither confirms nor denies the existence or nonexistence of the requested record.

Initial Denial Authority (IDA)—Persons in authorized positions that may withhold records.

Partial Denial—A decision to withhold part of a requested record.

Public Interest—The interest in obtaining official information that sheds light on how an agency performs its statutory duties and informs citizens about what their government is doing.

Reading Room—A place where the public may inspect and copy, or have copied, releasable records.

Records—The products of data compilation, such as all books, papers, maps, and photographs, machine readable materials inclusive of those in electronic form or format, or other documentary materials, regardless of physical form or characteristics, made or receive by an agency of the U.S. Government under Federal Law in connection with the transaction of public business and in the agency's possession and control at the time the FOIA request is made. Records include notes, working papers, and drafts.

Redact—To remove nonreleasable material.