



**INSPECTOR GENERAL**  
**DEPARTMENT OF DEFENSE**  
4800 MARK CENTER DRIVE  
ALEXANDRIA, VIRGINIA 22350-1500

February 13, 2020

## **INSPECTOR GENERAL INSTRUCTION 5400.07**

### **FREEDOM OF INFORMATION ACT PROGRAM**

#### **FOREWORD**

This instruction establishes policy and procedures by which the public may obtain information and records from the DoD Office of Inspector General.

This instruction will expire 10 years from its issuance date.

The office of primary responsibility for this instruction is the Office of General Counsel. This instruction is effective immediately.

FOR THE INSPECTOR GENERAL:

A handwritten signature in black ink, appearing to read "Steven A. Stebbins".

Steven A. Stebbins  
Chief of Staff

3 Appendices

**FREEDOM OF INFORMATION ACT PROGRAM**

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## CHAPTER 1 GENERAL

A. **Purpose.** This instruction establishes policy, assigns responsibilities, and prescribes procedures for the Freedom of Information Act (FOIA) Program within the DoD Office of Inspector General (OIG) according to references (a) and (b).

B. **Cancellation.** This instruction cancels IG Instruction 5400.7, *Freedom of Information Act Program*, April 16, 2010.

C. **Summary of Changes.** This instruction includes minor changes such as office names, grammar, sentence structure, and updated references. It also further defines the responsibilities of senior-level officials and Components in the administration of FOIA within the OIG as a result of a change in organizational structure.

D. **Applicability.** This instruction applies to the OIG.

E. **References.** (See Appendix A.)

F. **Definitions.** (See Appendix B.)

G. **Acronyms and Abbreviations.** (See Appendix C.)

H. **Policy.** The OIG will promote Government transparency and accountability by adopting a presumption in favor of disclosure in all decisions involving the FOIA and respond promptly to requests according to reference (a).<sup>1</sup>

### I. **Responsibilities.**

1. The **Inspector General** will administer the FOIA Program within the OIG, and may delegate responsibilities to the General Counsel (GC).

2. The **GC**, as head of the **Office of General Counsel (OGC)** will:

- a. Serve as appellate authority for the Inspector General.
- b. Designate the FOIA Public Liaison.
- c. Designate initial denial authority (IDA) responsibilities.
- d. Coordinate with the Department of Justice (DOJ) on matters involving litigation.

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<sup>1</sup> Requesters seeking records about themselves contained only in a Privacy Act system of records will have their requests processed according to reference (c), also known as the "Privacy Act of 1974," and implemented within the OIG by references (d) and (e).

3. The **Director, FOIA, Privacy and Civil Liberties Office** will:

- a. Organize, direct, and manage the FOIA, Privacy and Civil Liberties Office.
- b. Function as the central point of contact (POC) within the OIG for the receipt of all initial FOIA requests for records.
- c. Execute policies and establish procedures to ensure compliance with reference (f), as well as all applicable rules and regulations.
- d. Maintain the OIG FOIA Requester Service Center (RSC).
- e. Oversee the response to all initial FOIA requests received by the OIG.
- f. Forward search requests to the Components that possess, control, or have equities in the requested records.
- g. Serve as an IDA, who is authorized to deny initial requests for records.
- h. Operate and oversee the FOIA request tracking management system.
- i. Direct all FOIA-related training for the OIG.
- j. Administer the OIG FOIA RSC website according to reference (g). This includes OIG compliance with paragraph (a)(2) of reference (f).
- k. Receive, process, and review all FOIA appeals and make recommendations to the appellate authority for final appeal adjudication.
- l. Provide FOIA litigation support to the OGC.
- m. Act as a liaison with the National Archives and Records Administration (NARA), Office of Government Information Services (OGIS) in dispute resolution services, if sought by a requester. (See Appendix B for definition of OGIS.)
- n. Submit all quarterly and annual reports, as required, to the Office of the Chief Management Officer.

4. The **Component Heads** will:

- a. Designate a primary individual as the POC for all FOIA-related matters within the Component. Provide written notice, including notice of changes, which identify POCs to the FOIA, Privacy and Civil Liberties Office.

b. Forward all FOIA requests received directly from a requester, known as “out-of-channel requests,” to the FOIA, Privacy and Civil Liberties Office for processing and entry into the FOIA request tracking system.

c. Accurately process FOIA search requests received from the FOIA, Privacy and Civil Liberties Office within 10 business days, unless otherwise agreed upon.

d. Notify the FOIA, Privacy and Civil Liberties Office if the request does not reasonably describe specific records, so that the FOIA, Privacy and Civil Liberties Office can obtain clarification from the requester, if necessary.

e. Assist the FOIA, Privacy and Civil Liberties Office in release determinations, if necessary, and serve as the subject matter expert on documents in a Component’s possession. This includes, but is not limited to:

(1) Advising when the FOIA, Privacy and Civil Liberties Office should consult other Components or Federal agencies for input on release determinations.

(2) Identifying any sensitive information in records that may result in an identifiable harm if released. For example, the records may be subject to an ongoing investigation, identify an unknown investigative technique, or contain contractor proprietary information.

(3) Identifying how and where the Component searched for requested records. This description of the search process is necessary if a requester challenges the OIG’s search adequacy during an appeal or in the event of litigation.

f. Establish procedures according to reference (h), to mark record copies and to notify classified record holders that the records have been downgraded, declassified, or reclassified, as a result of a review under reference (f).

g. Provide the FOIA, Privacy and Civil Liberties Office with access to records, as necessary for processing a request.

5. The **Financial Management Office** will receive FOIA processing fees for deposit in the U.S. Treasury.

## CHAPTER 2 PROCEDURES

**A. General.** A request for release of information pursuant to the provisions of references (g) and (i) may be denied only upon the determination that one of the following applies:

1. Reference (f) exempts the release of requested information.
2. The requester fails to comply with the procedural requirements imposed by references (g) and (i).

**B. Processing of Freedom of Information Act Requests.**

1. The FOIA, Privacy and Civil Liberties Office receives two types of FOIA requests:

a. Direct Requests. Members of the general public seeking access to DoD or OIG records will submit direct requests. The FOIA, Privacy and Civil Liberties Office will task the appropriate Components for a records search.

b. Referrals or Consultations. Other DoD and non-DoD agencies may locate information during the processing of FOIA requests that is of substantial interest to the OIG. These agencies will either refer the information to the OIG for processing and direct response to the requester, or consult with the OIG prior to its release of the information. (See references (f) and (i).) The FOIA, Privacy and Civil Liberties Office will process the information upon receipt of a referral or consultation and, if necessary, forward its recommendations to the responsible Components for input on release determinations.

2. The FOIA, Privacy and Civil Liberties Office will assign a search request to the Components having responsibility for requested records upon receipt of a perfected FOIA request. (See Appendix B for a definition of “perfected FOIA request.”)

a. Components will conduct a search of all records within the Component, regardless of format. The Components will coordinate directly with the Information Governance Division (IGD) in the Office of the Chief Information Officer if they determine that the potentially responsive records are maintained by the IGD. The Components will review those records prior to providing the records to the FOIA, Privacy and Civil Liberties Office.

b. Components will also conduct a search of those records at any Federal Records Center (FRC) locations, for documents being sought that have been transferred to the FRC. According to reference (j), records that have been transferred to the legal custody of the Archivist of the United States (otherwise known as archival records) fall under the purview of NARA and are not subject to Component searches. FOIA requests for archival records should be directed to NARA according to reference (k).

c. If possible, Components will provide electronic versions of the responsive records in order to facilitate the review and redaction process.

3. A Component may not decline a FOIA search request from the FOIA, Privacy and Civil Liberties Office, except when the Component challenges responsibility for the information sought. The Component will explain why it does not have responsibility and, if possible, identify the appropriate Component or other Federal agency with responsibility for the information sought.

4. The FOIA, Privacy and Civil Liberties Office will assign a suspense date to each search request tasked to the Components. If necessary, Components must request extensions at least 3 business days before the suspense date. The FOIA, Privacy and Civil Liberties Office will grant time extensions on a case-by-case basis.

5. If the FOIA, Privacy and Civil Liberties Office provides the Component with a record for review that was located by another Federal agency, the Component will provide the record tasked for review back to the FOIA, Privacy and Civil Liberties Office along with its release recommendations.

6. If a Component denies a FOIA search request due to the relevant record's security classification according to reference (f), the Component is required to provide the FOIA, Privacy and Civil Liberties Office with a justification explaining whether the review of the records supports continued classification.

a. This justification will contain the specific rationale from Section 1.4 of reference (l) that supports this decision.

b. A Component cannot recommend denying a FOIA request in full for a classified document that contains unclassified information under Exemption 1 of reference (f), unless the unclassified information, when taken in aggregate, reveals classified information. This determination must comply with Section 1.7(e) of reference (l). Components may recommend denying requests for records that contain unclassified information which do not meet this standard by reasonably justifying the use of one or more of Exemptions 2 through 9 of reference (f).

7. Components will provide the FOIA, Privacy and Civil Liberties Office with all responsive records, regardless of classification, such as unclassified, confidential, secret, and top secret. This includes sensitive compartmented information records and special access program records. Components may contact the Office of Security to verify access level for FOIA, Privacy and Civil Liberties Office personnel.

8. When a Component responds to a search tasking, it is required to provide an explanation which will articulate with reasonable specificity how and where the search was conducted and any key terms used in the search. (See Chapter 1, paragraph I.4.e.(3).) If the record has been destroyed, the Component will be required to provide the applicable records disposition schedule.

9. The Component will contact the FOIA, Privacy and Civil Liberties Office for further clarification if a FOIA request appears broad or burdensome and does not allow a Component to execute a reasonable search.

10. To be subject to the FOIA, a record must exist and be in OIG possession and control when a Component searches for it. The Components are not obligated to create, compile, or answer questions to satisfy a FOIA request. The Components, upon concurrence with the FOIA, Privacy and Civil Liberties Office, may compile a new record according to reference (g), when doing so would result in a more useful response to the requester and would be less burdensome to the Components than providing existing records.

### **C. Processing of Freedom of Information Act Appeals.**

1. Upon receipt of an appeal by the FOIA, Privacy and Civil Liberties Office, the appellate authority will review the entire request file generated during the processing of the initial request to determine whether the response to the initial request complied with references (f), (g), and (i). If deemed proper, the appellate authority will uphold the initial action and notify the requester accordingly. If the appellate authority determines that further review is necessary, then the appellate authority will remand the request to the FOIA, Privacy and Civil Liberties Office for further processing, as appropriate.

2. If it is determined during the processing of an appeal that the administrative record cannot support the adequacy of the initial search, then the appeals processor will task a new search to the Components for responsive records.

3. If the appeal concerns an administrative processing determination, such as a denial of expedited processing, fee waiver, or a fee category determination, the appellate authority will review the original request file and any additional documentary evidence presented by the requester and then decide whether the initial processing decision was appropriate.

4. Whenever the appellate authority's final determination grants a partial or full appeal, the appellate authority will provide the determination and any other releasable material to the requester.

5. A requester must first submit a timely administrative appeal before seeking review of an adverse determination by a United States District Court. Additionally, an appeal will normally not be adjudicated by the appellate authority if the request becomes a matter in litigation. This decision will be made by the appellate authority after consultation with the DOJ attorney responsible for the litigation.

**APPENDIX A  
REFERENCES**

- a. DoD Directive 5400.07, *DoD Freedom of Information Act (FOIA) Program*, April 5, 2019
- b. DoD Directive 5106.01, *Inspector General of the Department of Defense*, April 20, 2012, as amended
- c. Section 552a of Title 5, United States Code, *The Privacy Act of 1974*
- d. DoD 5400.11-R, *Department Of Defense Privacy Program*, May 14, 2007
- e. IG Instruction 5400.11, *Privacy Program*, January 14, 2020
- f. Section 552 of Title 5, United States Code, *The Freedom of Information Act*
- g. DoD Manual 5400.07, *DoD Freedom of Information Act (FOIA) Program*, January 25, 2017
- h. DoD Manual 5200.01, Volume 1, *DoD Information Security Program: Overview, Classification, and Declassification*, February 24, 2012, as amended
- i. Part 286 of Title 32, Code of Federal Regulations, *DoD Freedom of Information Act (FOIA) Program*
- j. Section 1250.8 of Title 36, Code of Federal Regulations, *Does NARA provide access under FOIA to all the executive branch records housed at NARA facilities?*
- k. Section 1250.10 of Title 36, Code of Federal Regulations, *Do I need to use FOIA to gain access to records at NARA?*
- l. Executive Order 13526, *Classified National Security Information*, December 29, 2009

## APPENDIX B DEFINITIONS

1. **adverse determination.** A denial of a request, which includes one or more of the following: withholding of records in whole or in part; the requested record does not exist, cannot be located, or has been destroyed; or the requested record is not readily reproducible in the form or format sought by the requester. Adverse determinations also include denials involving fees or fee waiver matters, or denials or requests for expedited processing.
2. **appeal.** A request by a member of the general public, made under the FOIA, asking the appellate authority to reverse an IDA decision to withhold all or part of a requested record or to deny a request for a fee waiver, reduction of fees, or expedited processing. An appeal can also be submitted when the adequacy of a records search has been deemed insufficient.
3. **FOIA Public Liaison.** A supervisory official to whom a FOIA requester can raise concerns about the service the FOIA requester receives from a FOIA RSC and who is responsible for reducing delays, increasing transparency, understanding the status of requests, and assisting in the resolution of disputes.
4. **FOIA request.** A written request for records, made by a person, including a member of the public (U.S. or foreign citizen), 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.
5. **initial denial authority (IDA).** An individual granted the authority to withhold information requested pursuant to the FOIA for one or more of the nine categories of records exempt from mandatory disclosure, as described in reference (e).
6. **Office of Government Information Services (OGIS).** An office within NARA that serves as the Federal FOIA Ombudsman by mediating FOIA disputes, identifying methods to improve compliance with the statute, and educating stakeholders about the FOIA process.
7. **perfected FOIA request.** A FOIA request received by the FOIA RSC that reasonably describes the records being sought and provides sufficient detail to enable personnel to locate those records with a reasonable amount of effort. For records regarding first or third-party individuals, a perfected FOIA request includes submission of a Privacy Act waiver by the requester.
8. **Privacy Act request.** A written request from a U.S. citizen or alien lawfully admitted for permanent residence seeking records on themselves within a Privacy Act system of records.
9. **Requester Service Center (RSC).** A Center available to answer questions, or to provide the status of a pending request.

**APPENDIX C  
ACRONYMS AND ABBREVIATIONS**

DOJ	Department of Justice
FOIA	Freedom of Information Act
FRC	Federal Records Center
GC	General Counsel
IDA	initial denial authority
IGD	Information Governance Division
NARA	National Archives and Records Administration
OGC	Office of General Counsel
OGIS	Office of Government Information Services
OIG	Office of Inspector General
POC	point of contact
RSC	Requester Service Center