DEPARTMENT OF THE NAVY
OFFICE OF THE SECRETARY
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WASHINGTON, D.C. 20350-1000

SECNAVINST 5720.42F
N09B30
6 January 1999

SECNAV INSTRUCTION 5720.42F

From: Secretary of the Navy
To: All Ships and Stations

Subj: DEPARTMENT OF THE NAVY FREEDOM OF INFORMATION ACT (FOIA) PROGRAM

Ref:
(a) 5 U.S.C. 552, "Freedom of Information Act," as amended on 2 Oct 96
(b) DoD Directive 5400.7, "DoD Freedom of Information Act (FOIA) Program," of 29 Sep 97 (NOTAL)
(c) DoD 5400.7-R, "DoD Freedom of Information Act Program," of 4 Sep 98 (NOTAL)
(d) DoD Directive 5100.3, "Support of the Headquarters of Unified, Specified, and Subordinate Commands," of 1 Nov 88 (NOTAL)
(e) SECNAVINST 5820.8A, "Release of Official Information for Litigation Purposes and Testimony by DON Personnel" of 27 Aug 91
(f) SECNAVINST 5211.5D, "Department of the Navy Privacy Act (PA) Program," of 17 Jul 92
(g) SECNAVINST 5212.5D, "Navy and Marine Corps Records Disposal Manual" of 22 Apr 98

Encl:
(1) Table of Contents
(2) FOIA Definitions and Terms
(3) FOIA Fees
(4) FOIA Exemptions
(5) Form DD 2086, Record of Freedom of Information (FOI) Processing Cost, Jul 1997
(6) Form DD 2086-1, Record of Freedom of Information (FOI) Processing Cost for Technical Data, Jul 1997
(7) Form DD 2564, Annual Report Freedom of Information Act, Aug 1998
(8) Annual FOIA Report Instructions
(9) FOIA Case Worksheet
(10) Annual Report Compilation Worksheet

1. **Purpose**. To issue Department of the Navy (DON) policies and procedures for implementing references (a), (b) and (c) and

promote uniformity in the DON Freedom of Information Act (FOIA) Program. Enclosure (1) is a Table of Contents.

2. **Cancellation**. SECNAVINST 5720.42E. This instruction implements Electronic FOIA (E-FOIA) and should be read in its entirety.

3. **Summary of Changes**. Time limits for responding to FOIA requests changed from 10 to 20 working days; appeals must be "postmarked" (vice received) within 60 calendar days; activities unable to respond to requests within the time limits of the FOIA must enter requests into a multitrack processing system (i.e., simple, complex, expedited); activities may no longer use exemption "low (b)(2)" to withhold information from disclosure; activities must adjudicate "foreseeable harm" before claiming exemption (b)(5); activities may choose to make "discretionary" disclosures of information; non-exempt information may be released to a requester, without the requester having to cite FOIA as a means to access the information; Annual FOIA Report has been expanded and is reported by fiscal year with new reporting dates; guidance on establishing electronic reading rooms and websites is addressed; the DON Chief Information Officer (DONCIO) has responsibility for preparing and making publicly available an index of all DON major information systems; the appellate authorities have new addresses; removed resource materials such as sample training package, sample letters, etc., from the instruction and placed on the Navy FOIA website; expanded the list of "Other Reasons" for not responding to a request; redefined FOIA training requirements; removed guidance on For Official Use Only (FOUO) since cognizance has been transferred to the Assistant Secretary of Defense for Command, Control, Communications and Intelligence [Note: activities shall follow reference (c) pending issuance of separate guidance]; and expanded "FOIA Definitions and Terms" [see enclosure (2)].

4. **Navy FOIA Website/FOIA Handbook**

a. The Navy FOIA website (http://www.ogc.secnav.hq.navy.mil/foia/index) is an excellent resource for requesters and FOIA coordinators. It provides connectivity to the Navy's official website, to other FOIA and non/FOIA websites, and to the Navy's electronic reading rooms.

b. FOIA requesters are encouraged to visit the Navy FOIA website prior to filing a request. It features a FOIA Handbook which provides: guidance on how and where to submit requests;

what's releasable/what's not; addresses for frequently requested information; time limits and addresses for filing appeals, etc. FOIA requesters may also use the electronic FOIA request form on the website to seek access to records originated by the Secretary of the Navy (SECNAV) or the Chief of Naval Operations (CNO).

c. A copy of this instruction and its references are downloadable from the Navy FOIA website. This instruction is also codified at 32 Code of Federal Regulations (CFR) Part 701.

5. Applicability

a. The policies and procedures contained in this instruction apply throughout the DON and take precedence over other DON instructions, which may serve to supplement it [i.e., Public Affairs Regulations, Security Classification Regulations, Navy Regulations, Marine Corps Orders, etc.]. Further, issuance of supplementary instructions by DON activities, deemed essential to the accommodation of perceived requirements peculiar to those activities, may not conflict.

b. The FOIA applies to "records" maintained by "agencies" within the Executive Branch of the Federal government, including the Executive Office of the President and independent regulatory agencies. It states that "any person" (U.S. citizen; foreigner, whether living inside or outside the United States; partnerships; corporations; associations; and foreign and domestic governments) has the right enforceable by law, to access Federal agency records, except to the extent that such records (or portions thereof) are protected from disclosure by one or more of the nine FOIA exemptions or one of three special law enforcement exclusions.

c. Neither Federal agencies nor fugitives from justice may use the FOIA to access agency records.

d. Reference (c) directs that the FOIA programs of the U.S. Atlantic Command (USACOM) and the U.S. Pacific Command (USCINCPAC) fall under the jurisdiction of the Department of Defense (DoD) not DON. This policy represents an exception to the policies directed under reference (d).

6. Responsibility and Authority

a. The Head, DON PA/FOIA Policy Branch [CNO (N09B30)] has been delegated the responsibility for managing the DON's FOIA

program, which includes setting FOIA policy and administering, supervising, and overseeing the execution of references (a), (b), and (c).

(1) As principal DON FOIA policy official, CNO (N09B30) issues SECNAVINST 5720.42; oversees the administration of the DON FOIA program; issues and disseminates FOIA policy; oversees the Navy FOIA website; represents the DON at all meetings, symposiums, and conferences that address FOIA matters; writes the Navy's FOIA Handbook; serves on FOIA boards and committees; serves as principal policy advisor and oversight official on all FOIA matters; prepares the DON Annual FOIA Report for submission to the Attorney General; reviews all FOIA appeals to determine trends that impact on DON; reviews all FOIA litigation matters involving the DON and apprises the Director, Freedom of Information and Security Review (DFOISR), DoD of same; responds to depositions and litigation regarding DON FOIA policy under reference (e); reviews/analyzes all proposed FOIA legislation to determine its impact on the DON; develops a Navy-wide FOIA training program and serves as training oversight manager; conducts staff assistance visits/reviews within DON to ensure compliance with reference (a) and this instruction; reviews all SECNAV and OPNAV instructions/forms that address FOIA; and oversees the processing of FOIA requests received by the Secretary of the Navy (SECNAV) and Chief of Naval Operations (CNO), to ensure responses are complete, timely, and accurate. Additionally, N09B30 works closely with other DoD and DON officials to ensure they are aware of highly visible and/or sensitive FOIA requests being processed by the DON.

(2) SECNAV has delegated Initial Denial Authority (IDA) to CNO (N09B30) for requests at the Secretariat and OPNAV level.

b. CMC is delegated responsibility for administering and supervising the execution of this instruction within the Marine Corps. To accomplish this task, the Director of Administrative Resource Management (Code ARAD) serves as the FOIA Coordinator for Headquarters, U.S. Marine Corps, and assists CNO (N09B30) in promoting the DON FOIA Program by issuing a CMC FOIA Handbook; utilizing the CMC FOIA website to disseminate FOIA information; consolidating its activities Annual FOIA Reports and submitting it to CNO (N09B30); maintaining a current list of CMC FOIA coordinators, etc.

c. DONCIO is responsible for preparing and making publicly available upon request an index of all DON major information systems and a description of major information and record

locator systems maintained by the DON as required by references (a) and (c).

d. FOIA coordinators will:

(1) Implement and administer a local FOIA program under this instruction; serve as principal point of contact on FOIA matters; issue a command/activity instruction that implements SECNAVINST 5740.42F by reference and highlights only those areas unique to the command/activity (i.e., designate the command/activity's FOIA Coordinator and IDA; address internal FOIA processing procedures; and address command/activity level FOIA reporting requirements); receive and track FOIA requests to ensure responses are made in compliance with references (a), (b), (c) and this instruction; provide general awareness training to command/activity personnel on the provisions of reference (a) and this instruction; collect and compile FOIA statistics and submit a consolidated Annual FOIA Report to Echelon 2 FOIA coordinator for consolidation; provide guidance on how to process FOIA requests; and provide guidance on the scope of FOIA exemptions.

(2) Additionally, CMC (ARAD) and Echelon 2 FOIA coordinators will:

(a) Ensure that reading room materials are placed in the activity's electronic reading room and that the activity's website is linked to the Navy FOIA website and the activity's reading room is linked to the Navy's FOIA reading room lobby. Documents placed in the reading room shall also be indexed as a Government Information Locator Service (GILS) record, as this will serve as an index of available records.

(b) Review proposed legislation and policy recommendations that impact the FOIA and provide comments to CNO (N09B30).

(c) Review SECNAVINST 5720.42F and provide recommended changes/comments to CNO (N09B30).

(d) Routinely conduct random staff assistance visits/reviews/self-evaluations within the command and lower echelon commands to ensure compliance with FOIA.

(e) Collect and compile command and feeder reports for the Annual FOIA Report and provide a consolidated report to CNO (N09B30).

(f) Maintain a listing of their subordinate activities' FOIA coordinators to include full name, address, and telephone (office and fax) and place on their website. [Note: Do not place names of FOIA coordinators who are overseas, routinely deployable or in sensitive units on the website. Instead just list "FOIA Coordinator"].

(g) Notify CNO (N09B30) of any change of name, address, office code and zip code, telephone and facsimile number, and/or e-mail address of Echelon 2 FOIA Coordinators.

(h) Conduct overview training to ensure all personnel are knowledgeable of the FOIA and its requirements. See paragraph 15.

(i) Work closely with the activity webmaster to ensure that information placed on the activity's website does not violate references (a), (c) and (f).

e. Initial Denial Authorities (IDAs). The following officials are delegated to serve as Initial Denial Authorities, on behalf of SECNAV [see enclosure (2) for definition]:

(1) Under Secretary of the Navy; Deputy Under Secretary of the Navy; Assistant Secretaries of the Navy (ASNs) and their principal deputy assistants; Assistant for Administration (SECNAV); Director, Administrative Division (SECNAV); Special Assistant for Legal and Legislative Affairs (SECNAV); Director, Office of Program Appraisal (SECNAV); DONCIO; Director, Small and Disadvantaged Business Utilization (SECNAV); Chief of Information (CHINFO); Director, Navy International Programs Office; Chief of Legislative Affairs; CNO; Vice CNO; Director, Naval Nuclear Propulsion Program (NOON); Director, Navy Staff (N09B); Head, DON PA/FOIA Policy Branch (N09B30); Director of Naval Intelligence (N2); Director of Space, Information Warfare, Command and Control (N6); Director of Navy Test & Evaluation & Technology Requirements (N091); Surgeon General of the Navy (N093); Director of Naval Reserve (N095); Oceanographer of the Navy (N096); Director of Religious Ministries/Chief of Chaplains of the Navy (N097); all Deputy Chiefs of Naval Operations; Chief of Naval Personnel; Director, Strategic Systems Programs; Chief, Bureau of Medicine and Surgery; Director, Office of Naval Intelligence; Naval Inspector General; Auditor General of the Navy; Commanders of the Naval Systems Commands; Chief of Naval Education and Training; Commander, Naval Reserve Force; Chief of Naval Research; Director, Naval Criminal Investigative Service; Deputy

Commander, Naval Legal Service Command; Commander, Navy Personnel Command; Director, Naval Center of Cost Analysis; Commander, Naval Meterology and Oceanography Command; Director, Naval Historical Center; heads of DON staff offices, boards, and councils; Program Executive Officers; and all general officers.

(2) Within the Marine Corps: CMC and his Assistant, Chief of Staff, Deputy Chiefs of Staff; Director, Personnel Management Division; Fiscal Director of the Marine Corps; Counsel for the Commandant; Director of Intelligence; Director, Command, Communications and Computer Systems Division; Legislative Assistant to the Commandant; Director, Judge Advocate Division; Inspector General of the Marine Corps; Director, Manpower, Plans, and Policy Division; Head, Freedom of Information and Privacy Acts Section, HQMC; Director of Public Affairs; Director of Marine Corps History and Museums; Director, Personnel Procurement Division; Director, Morale Support Division; Director, Human Resources Division; Director of Headquarters Support; commanding generals; directors, Marine Corps districts; commanding officers, not in the administrative chain of command of a commanding general or district director. For each official listed above, the deputy or principal assistant is also authorized denial authority.

(3) JAG and his Deputy and the DON General Counsel (DONGC) and his deputies are excluded from this grant of authorization, since SECNAV has delegated them to serve as his appellate authorities. However, they are authorized to designate IDA responsibilities to other senior officers/ officials within JAG and DONGC. DONGC has delegated IDA responsibilities to the Assistant General Counsels and the Associate General Counsel (Litigation).

(4) For the shore establishment and operating forces: All officers authorized by Article 22, Uniform Code of Military Justice (UCMJ) or designated in section 0120, Manual of the Judge Advocate General (JAGINST 5800.7C) to convene general courts-martial.

(5) IDAs must balance their decision to centralize denials for the purpose of promoting uniform decisions against decentralizing denials to respond to requests within the FOIA time limits. Accordingly, the above listed IDAs are authorized to delegate initial denial authority to subordinate activities for the purpose of streamlining FOIA processing. They may also delegate authority to a specific staff member, assistant, or individuals acting during their absence if this serves the

purpose of streamlining and/or complying with the time limits of FOIA. [Note: Such delegations shall be limited to comply with reference (b).]

(6) Delegations of IDA authority should be reflected in the activity's supplementing FOIA instruction or by letter, with a copy to CNO (N09B30) or CMC (ARAD), as appropriate.

f. Release Authorities. Release authorities are authorized to grant requests on behalf of the Office of the Secretary of the Navy for agency records under their possession and control for which no FOIA exemption applies; to respond to requesters concerning refinement of their requests; to provide fee estimates; and to offer appeal rights for adequacy of search or fee estimates to the requester.

g. Appellate authorities are addressed in paragraph 15.

7. FOIA Definitions and Terms. An comprehensive list of FOIA definitions and terms is provided at enclosure (2).

8. Policy

a. Compliance with the FOIA. DON policy is to comply with references (a) through (c) and this instruction in both letter and spirit; conduct its activities in an open manner consistent with the need for security and adherence to other requirements of law and regulation; and provide the public with the maximum amount of accurate and timely information concerning its activities.

b. Prompt Action. DON activities shall act promptly on requests when a member of the public complies with the procedures established in this instruction [i.e., files a "perfected request"] and the request is received by the official designated to respond. See paragraph 11 for minimum requirements of the FOIA.

c. Provide Assistance. DON activities shall assist requesters in understanding and complying with the procedures established by this instruction, ensuring that procedural matters do not unnecessarily impede a requester from obtaining DON records promptly.

d. Grant Access

(1) DON activities shall grant access to agency records when a member of the public complies with the provisions of this instruction and there is no FOIA exemption available to withhold the requested information [see enclosure (4)].

(2) In those instances where the requester has not cited FOIA, but the records are determined to be releasable in their entirety, the request shall be honored without requiring the requester to invoke FOIA.

e. Create a Record

(1) A record must exist and be in the possession and control of the DON at the time of the request to be considered subject to this instruction and the FOIA. Accordingly, DON activities need not process requests for records which are not in existence at the time the request is received. In other words, requesters may not have a "standing FOIA request" for release of future records.

(2) There is no obligation to create, compile, or obtain a record to satisfy a FOIA request. However, this is not to be confused with honoring form or format requests (see paragraph 8h). A DON activity, 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 enclosure (3).

(3) With respect to 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, DON activities 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 when 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 interference with the operation of the DON activity's automated information system would not be a business as usual approach.

f. Disclosures

(1) Discretionary Disclosures. DON activities shall make discretionary disclosures whenever disclosure would not foreseeably harm an interest protected by a FOIA exemption. A discretionary disclosure is normally not appropriate for records clearly exempt under exemptions (b)(1), (b)(3), (b)(4), (b)(6), (b)(7)(C) and (b)(7)(F). Exemptions (b)(2), (b)(5), and (b)(7)(A), (b)(7)(B), (b)(7)(D) and (b)(7)(E) are discretionary in nature and DON activities are encouraged to exercise discretion whenever possible. Exemptions (b)(4), (b)(6), and (b)(7)(C) cannot be claimed when the requester is the "submitter" of the information. While discretionary disclosures to FOIA requesters constitute a waiver of the FOIA exemption that may otherwise apply, this policy does not create any legally enforceable right.

(2) Public Domain. Non-exempt records released under FOIA to a member of the public are considered to be in the public domain. Accordingly, such records may also be made available in reading rooms, in paper form, as well as electronically to facilitate public access.

(3) Limited Disclosures. Disclosure of records to a properly constituted advisory committee, to Congress, or to other Federal agencies does not waive a FOIA exemption.

(4) Unauthorized Disclosures. Exempt records disclosed without authorization by the appropriate DON official do not lose their exempt status.

(5) Official versus Personal Disclosures. While authority may exist to disclose records to individuals in their official capacity, the provisions of this instruction apply if the same individual seeks the records in a private or personal capacity.

(6) Distributing Information. DON activities are encouraged to enhance access to information by distributing information on their own initiative through the use of electronic information systems, such as the Government Information Locator Service (GILS).

g. Honor Form or Format Requests. DON activities shall provide the record in any form or format requested by the requester, if the record is readily reproducible in that form or format. DON activities shall make reasonable efforts to maintain their records in forms or formats that are reproducible. In responding to requests for records, DON activities 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 DON activities' automated information system. Such determinations shall be made on a case-by-case basis.

h. Authenticate Documents. Records provided under this instruction 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. DON activities may charge for the service at a rate of $5.20 for each authentication.

9. Reading Rooms. The FOIA requires that (a)(2) records created on or after 1 November 1996, be made available electronically (starting 1 November 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. Reference (c) requires that each DoD Component provide an appropriate facility or facilities where the public may inspect and copy or have copied the records held in their reading rooms. To comply, the Navy FOIA website includes links that assist members of the public in locating Navy libraries, online documents, and Navy electronic reading rooms maintained by SECNAV/CNO, CMC, OGC, JAG and Echelon 2 commands. Although each of these activities will maintain their own document collections on their own servers, the Navy FOIA website provides a common gateway for all Navy online resources. To this end, DON activities shall:

a. Establish their reading rooms and link them to the Navy FOIA Reading Room Lobby which is found on the Navy FOIA website.

b. Ensure that responsive documents held by their subordinate activities are also placed in the reading room. [Note: SECNAV/ASN and OPNAV offices shall ensure that responsive documents are provided to CNO (N09B30) for placement in the reading room.]

c. Ensure that documents placed in a reading room are properly excised to preclude the release of personal or contractor-submitted information prior to being made available to the 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 DON activity 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 DON activity may refer to this description rather than write a separate justification for each deletion. DON activities may remove (a)(2)(D) records from their electronic reading room when the appropriate officials determine that access is no longer necessary.

d. Should a requester submit a FOIA request for FOIA-processed (a)(2) records, and insist that the request be processed, DON activities shall process the FOIA request. However, DON activities 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.

e. DON activities may share reading room facilities if the public is not unduly inconvenienced. When appropriate, the cost of copying may be imposed on the person requesting the material in accordance with FOIA fee guidelines [see enclosure (3)].

f. DON activities shall maintain an index of all available documents. A general index of FOIA-processed (a)(2) records shall be made available to the public, both in hard copy and electronically by 31 December 1999. To comply with this requirement, DON activities shall establish a GILS record for each document it places in a reading room. No "(a)(2)" materials issued or adopted after 4 July 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 or adopted before 4 July

1967, need not be indexed, but must be made available upon request if not exempted under this instruction.

g. An index and copies of unclassified Navy instructions, forms, and addresses for DON activities (i.e., the Standard Navy Distribution List (SNDL) are located on the Navy Electronics Directives System (http://neds.nebt.daps.mil/).

h. DON 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 by JAG in their FOIA reading room and electronically to the public.

i. Although not required to be made available in response to FOIA requests or made available in FOIA Reading Rooms, "(a)(1)" materials may, 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.

10. Relationship Between the FOIA and PA. Not all requesters are knowledgeable of the appropriate statutory authority to cite when requesting records. In some instances, they may cite neither Act, but will imply one or both Acts. For these reasons, the following guidelines are provided to ensure requesters receive the greatest amount of access rights under both Acts:

a. If the record is required to be released under the FOIA, the PA does not bar its disclosure. Unlike the FOIA, the PA applies only to U.S. citizens and aliens admitted for permanent residence. Reference (f) implements the DON's Privacy Act Program.

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

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

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

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

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

g. Requesters shall be advised in final responses which Act(s) was (were) used, inclusive of appeal rights.

h. The time limits for responding to the request will be determined based on the Act cited. For example, if a requester seeks access under the FOIA for his or her personal records which are contained in a PA system of records, the time limits of the FOIA apply.

i. Fees will be charged based on the kind of records being requested (i.e., FOIA fees if agency records are requested; PA fees for requesters who are seeking access to information contained in a PA system of record which is retrieved by their name and/or personal identifier).

11. Processing FOIA Requests. Upon receipt of a FOIA request, DON activities shall:

a. Review the request to ensure it meets the minimum requirements of the FOIA to be processed.

(1) Minimum Requirements of a FOIA Request. A request must be in writing; cite or imply FOIA; reasonably describe the records being sought so that a knowledgeable official of the agency can conduct a search with reasonable effort; and if fees are applicable, the requester should include a statement regarding willingness to pay all fees or those up to a specified amount or request a waiver or reduction of fees.

(2) If a request does not meet the minimum requirements of the FOIA, DON activities shall apprise the requester of the defect and assist him/her in perfecting the request. [Note: The statutory 20 working day time limit applies upon receipt of a "perfected" FOIA request.]

b. When a requester or his/her attorney requests personally identifiable information in a record, the request may require a notarized signature or a statement certifying under the penalty of perjury that their identity is true and correct. 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.

c. Review Description of Requested Record(s)

(1) The FOIA requester is responsible for describing the record he/she seeks so that a knowledgeable official of the activity can locate the record with a reasonable amount of effort. In order to assist DON activities in conducting more timely searches, a requester should endeavor to provide as much identifying information as possible. When a DON activity 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. DON activities are not obligated to act on the request until the requester responds to the specificity letter. When practicable, DON activities 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 FOIA. 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.

(a) 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.

(b) 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.

(2) 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 DON activity'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.

(3) The following guidelines deal with requests for personal records: Ordinarily, when personal identifiers are provided solely in connection with a request for records concerning the requester, only records in Privacy Act system of records that can be retrieved by personal identifiers need be searched. However, if a DON activity has reason to believe that records on the requester may exist in a record system other than a PA system, the DON activity shall search the system under the provisions of the FOIA. In either case, DON activities may request a reasonable description of the records desired before searching for such records under the provisions of the FOIA and the PA. If the records are required to be released under the FOIA, the PA does not bar its disclosure.

(4) The previous guidelines notwithstanding, the decision of the DON activity concerning reasonableness of description must be based on the knowledge of its files. If the description enables the DON activity 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 DON activity to deny the request on the ground that it does not reasonably describe the records sought. The key factor is the ability of the staff to reasonably ascertain and locate which records are being requested.

d. Review Request to Determine if FOIA Fees May Be Applicable

(1) FOIA fee issues shall be resolved before a DON activity begins processing a FOIA request.

(2) FOIA fees shall be at the rates prescribed at enclosure (3).

(3) If fees are applicable, a requester shall be apprised of what category of requester he/she has been placed and provided a complete breakout of fees to include any and all information provided before fees are assessed [e.g., first two hours of search and first 100 pages of reproduction have been provided without charge.]

(4) Forms DD 2086 [for FOIA requests] and 2086-1 [for FOIA requests for technical data] serve as an administrative record of all costs incurred to process a request; actual costs charged to a requester [i.e., search, review, and/or duplication and at what salary level and the actual time expended]; and as input to the Annual FOIA Report. Requesters may request a copy of the applicable form to review the time and costs associated with the processing of a request.

(5) Final response letters shall address whether or not fees are applicable or have been waived. A detailed explanation of FOIA fees is provided at enclosure (3).

e. Control FOIA Request. Each FOIA request should be date stamped upon receipt; given a case number; and entered into a formal control system to track the request from receipt to response. Coordinators may wish to conspicuously stamp, label, and/or place the request into a brightly colored folder/cover sheet to ensure it receives immediate attention by the action officer.

f. Enter Request into Multitrack Processing System. When a DON activity 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.

(1) DON activities may establish as many queues as they wish, however, at 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 for simple requests, one track for complex requests, and one track for expedited processing. Determinations as to whether a request is simple or complex shall be made by each DON activity.

(2) DON activities shall provide a requester whose request does not qualify for the fastest queue (except for expedited processing), 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.

(3) This multitrack processing system does not obviate the activity's responsibility to exercise due diligence in processing requests in the most expeditious manner possible.

(4) Referred requests shall be processed according to the original date received by the initial activity and then placed in the appropriate queue.

(5) Establish a separate queue for 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 office which will determine whether to grant expedited access. Once the determination has been made to grant expedited processing, DON activities shall process the request as soon as practicable. Actions by DON activities 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.

(a) 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.

(b) 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 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.

(c) 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.

(d) 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 his/her 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.

(e) Other reasons that merit expedited processing by DON activities 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/her knowledge. Humanitarian need means that disclosing the information will promote the welfare and interests of mankind. A demonstration of humanitarian need shall also be made by a statement certified by the requester to be true and correct to the best of his/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.

(7) These same procedures also apply to requests for expedited processing of administrative appeals.

g. Respond to Request within FOIA Time Limits. Once an activity receives a "perfected" FOIA request, it shall inform the requester of its decision to grant or deny access to the requested records within 20 working days. Activities are not necessarily required to release records within the 20 working days, but access to releasable records should be granted promptly thereafter and the requester apprised of when he/she may expect to receive a final response to his/her request. Naturally, interim releases of documents are encouraged if appropriate. Sample response letters are provided on the Navy FOIA website.

(1) If a significant number of requests, or the complexity of the requests prevents a final response

determination within the statutory time period, DON activities shall advise the requester of this fact, and explain how the request will be responded to within its multitrack processing system. A final response determination is notification to the requester that the records are released, or will be released by a certain date, or the records are denied under the appropriate FOIA exemption(s) or the records cannot be provided for one or more of the "other reasons" (see paragraph 10m). 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 under FOIA.

(2) Formal Extension. In those instances where a DON activity cannot respond within the 20 working day time limit, the FOIA provides for extension of initial time limits for an additional 10 working days for three specific situations: the need to search for and collect records from separate offices; the need to examine a voluminous amount of records required by the request; and the need to consult with another agency or agency component. In such instances, naval activities shall apprise requesters in writing of their inability to respond within 20 working days and advise them of their right to appeal to the appellate authority. [Note: Formal extension letters require IDA signature.]

(3) Informal Extension. A recommended alternative to taking a formal extension is to call the requester and negotiate an informal extension of time with the requester. The advantages include the ability to agree on a mutually acceptable date to respond that exceeds a formal extension of an additional 10 working days, and the letter of confirmation does not require the signature of an IDA. Additionally, it does not impact on the additional days the appellate authority may take when responding to a FOIA appeal.

h. Conduct a Search for Responsive Records

(1) Conduct a search for responsive records, keeping in mind a test for reasonableness [i.e., file disposition requirements set forth in reference (g)]. This includes making a manual search for records as well as an electronic search for records. Do not assume that because a document is old, it does not exist. Rather, ensure that all possible avenues are considered before making a determination that no record could be

found [i.e., such as determining if the record was transferred to a federal records center for holding].

(2) Requesters Can Appeal "Adequacy of Search." To preclude unnecessary appeals, you are encouraged to detail your response letter to reflect the search undertaken so the requester understands the process. It is particularly helpful to address the records disposal requirements set forth in reference (g) for the records being sought.

i. Review Documents for Release. Once documents have been located, the originator or activity having possession and control is responsible for reviewing them for release and coordinating with other activities/agencies having an interest. The following procedures should be followed:

(1) Sort documents by originator and make necessary referrals [see paragraph 12].

(2) Documents for which the activity has possession and control should be reviewed for release. If the review official determines that all or part of the documents requested require denial, and the head of the activity is an IDA, he/she shall respond directly to the requester. If, however, the activity head is not an IDA, then the request, a copy of the respponsive documents (unexcised), proposed redacted copy of the documents, and a detailed explanation regarding their release must be referred to the IDA for a final release determination and the requester shall be notified in writing of the transfer.

(3) Documents for which the activity does not have possession and control, but has an interest, should be referred to the originator along with any recommendations regarding release [see paragraph 12].

j. Process Non-Responsive Information in Responsive Documents. DON activities shall interpret FOIA requests liberally when determining which records are responsive to the requests, and may release non-responsive information. However, should DON activities desire to withhold non-responsive information, the following steps shall be accomplished:

(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.

(2) If the responsive record is unclassified 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 exempted [state the 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.

(3) If the responsive record is classified, and the requester does not agree to deletion of non-responsive information without a FOIA exemption, release all unclassified responsive and non-responsive information which is not exempt. If the non-responsive information is exempt, follow the procedures provided above. The classified, non-responsive information need not be reviewed for declassification at this point. Advise the requester than even if the classified information were determined responsive, it would likely be exempt under 5 U.S.C. 552 (b)(1) 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.

k. Withholding/Excising Information

(1) DON records may only be withheld if they qualify for exemption under one or more of the nine FOIA exemptions/three exclusions and it is determined that a foreseeable harm to an interest protected by those exemptions would result if the information is released. There are nine FOIA exemptions. See enclosure (4) for the scope of each exemption.

(2) Although a FOIA exemption may apply, DON activities are encouraged to consider discretionary disclosures of information when an exemption permits such disclosure [see paragraph 8f(1).]

(3) Excising Documents. The excision of information within a document should be made so that the requester can readily identify the amount of information being withheld and the reason for the withholding. Accordingly, ensure that any deletion of information is bracketed and all applicable exemptions listed. In those instances, where multiple pages of

documents are determined to be exempt from disclosure in their entirety, indicate the number of pages being denied and the basis for the denial.

l. Reasonably Segregable Information. DON activities must release all "reasonably segregable information" when the meaning of these portions is not distorted by deletion of the denied portions, and when it reasonably can be assumed that a skillful and knowledgeable person could not reasonably reconstruct excised information. When a record is denied in whole, the response to the requester will specifically state that it is not reasonable to segregate portions of the record for release.

m. Making a Discretionary Disclosure. A discretionary disclosure to one requester may preclude the withholding of similar information under a FOIA exemption if subsequently requested by the same individual or someone else [see paragraph 8f(1).] The following suggested language should be included with the discretionary disclosure of any record that could be subject to withholding: "The information you requested is subject to being withheld under section (b)(_) of the FOIA. The disclosure of this material to you by the DON is discretionary and does not constitute a waiver of our right to claim this exemption for similar records in the future."

n. Other Reasons. There are 10 reasons for not complying with a request for a record under FOIA:

(1) No Record. The DON activity conducts a reasonable search of files and fails to identify records responsive to the request. [Note: Requester must be advised that he/she may appeal the adequacy of search and provided appeal rights. Response letter does not require signature by IDA.]

(2) Referral. The request is referred to another DoD/DON activity or to another executive branch agency for their action. [Note: Referral does not need to be signed by IDA.]

(3) Request Withdrawn. The requester withdraws request. [Note: Response letter does not require signature by IDA.]

(4) Fee-Related Reason. Requester is unwilling to pay fees associated with the request; is past due in payment of fees from a previous request; or disagrees with the fee estimate. [Note: Requester must be advised that he/she may appeal the fee estimate. Response letter does not require signature by IDA.]

(5) Records Not Reasonably Described. A record has not been described with sufficient particularity to enable the DON activity to locate it by conducting a reasonable search. [Note: Response letter does not require signature by IDA.]

(6) Not a Proper FOIA Request for Some Other Reason. When the requester fails unreasonably to comply with procedural requirements, other than those fee-related issues described above, imposed by this instruction and/or other published rules or directives. [Note: Response letter does not require signature by IDA.]

(7) Not an Agency Record. When the requester is provided a response indicating that the requested information was "not an agency record" within the meaning of the FOIA and this instruction. [Note: Response letter does not require signature by IDA.]

(8) Duplicate Request. When a request is duplicative of another request which has already been completed or currently in process from the same requester. [Note: Response letter does not require signature by IDA.]

(9) Other (Specify). When a FOIA request cannot be processed because the requester does not comply with published rules, other than for those reasons described above. DON activities must document the specific discrepancy. [Note: Response letter does not require signature by IDA.]

(10) Denial of Request. The record is denied in whole or in part in accordance with procedures set forth in references (a) and (c) and this instruction. [Note: The requester is advised that he/she may appeal the determination and response letter must be signed by IDA.]

o. Writing a Response Letter. FOIA response letters should contain the following information:

(1) The date of the request; when it was received; if records were not located, where the search was conducted and what the records disposal requirements are for those records.

(2) Cut-off Dates. Normally, DON activities shall consider the date of receipt of a FOIA request as the cut-off date for a records search. Where a DON activity employs a particular cut-off date, however, it should give notice of that date in the response letter to the requester.

(3) If a request is denied in whole or in part, the denial response letter should cite the exemption(s) claimed; if possible, delineate the kinds of information withheld (i.e., social security numbers, date of birth, home addresses, etc.) as this may satisfy the requester and thus eliminate an appeal; provide appeal rights, and be signed by an IDA. However, there is no requirement that the response contain the same documentation necessary for litigation (i.e., FOIA requesters are not entitled to a Vaughn index [see definition at enclosure (2)] during the administrative process.

(4) The fees charged or waived; if fees were charged, what category was the requester placed in and provide a breakout of the fees charged (i.e., the first 2 hours of search were waived and so you are being charged for the remaining 4 hours of search at $25 per hour, or $100; the first 100 pages of reproduction were waived and the remaining 400 pages being provided were charged at $.15 per page, resulting in $60 in reproduction fees, for a total of $160). These figures are derived from Form DD 2086 (FOIA Fees) or Form DD 2086-1 (Technical Data Fees).

(5) Sample response letters are provided on the Navy FOIA website.

p. Press Responses. Ensure responses being made to the press are cleared through public affairs channels.

q. Special Mail Services. DON activities 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.

12. Referrals

a. The DoD/DON FOIA referral policy is based upon the concept of the originator of a record making a release determination on its information. If a DON activity receives a request for records originated by another DoD/DON activity, it should contact the activity to determine if it also received the request, and if not, obtain concurrence to refer the request. In either situation, the requester shall be advised of the action taken, unless exempt information would be revealed.

b. While referrals to originators of information result in obtaining the best possible decision on release of the information, the policy does not relieve DON activities 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, DON activities should coordinate with the originator of the information prior to making a release determination.

c. A request received by a DON activity having no records responsive to a request shall be referred routinely to another DoD/DON activity, if the other activity has reason to believe it has the requested record. Prior to notifying a requester of a referral to another DoD/DON activity, the DON activity receiving the initial request shall consult with the other DoD/DON activity to determine if that activity's association with the material is exempt. If the association is exempt, the activity receiving the initial request will protect the association and any exempt information without revealing the identity of the protected activity. The protected activity shall be responsible for submitting the justifications required in any litigation.

d. Any DON activity receiving a request that has been misaddressed shall refer the request to the proper address and advise the requester. DON activities making referrals of requests or records shall include with the referral, a point of contact by name, a telephone number (commercial and DSN), and an e-mail address (if available).

e. A DON activity shall refer a FOIA request for a record that it holds but was originated by another Executive Branch agency, to them for a release determination and direct response to the requester. 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.

f. A DON activity may refer a request for a record that it originated to another activity or agency when the activity or agency has a valid interest in the record, or the record was created for the use of the other agency or activity. In such situations, provide the record and a release recommendation on the record with the referral action. DON activities should include a point of contact and telephone number in the referral letter. If that organization is to respond directly to the requester, apprise the requester of the referral.

g. Within the DON/DoD, a DON activity shall ordinarily refer a FOIA request and a copy of the record it holds, but that was originated by another DON/DoD activity or that contains substantial information obtained from that activity, to that activity for direct response, after direct coordination and obtaining concurrence from the activity. The requester shall be notified of such referral. In any case, DON activities shall not release or deny such records without prior consultation with the activity, except as provided in paragraph 12c.

h. Activities receiving a referred request shall place it in the appropriate processing queue based on the date it was initially received by the referring activity/agency.

i. Agencies outside the DON that are subject to the FOIA

(1) A DON activity may refer a FOIA request for any record that originated in an agency outside the DON 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 DON activity must respond to the request. (Note: DON activities shall not refer documents originated by entities outside the Executive Branch of Government (e.g., Congress, State and local government agencies, police departments, private citizen correspondence, etc.), to them for action and direct response to the requester, since they are not subject to the FOIA).

(2) A DON activity 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 DON 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 DON activity may only respond directly to the requester after coordination with the outside agency.

13. Processing Requests Received from Governmental Officials

a. Members of Congress. Many constituents seek access to information through their Member of Congress. Members of Congress who seek access to records on behalf of their constituent are provided the same information that the constituent would be entitled to receive. There is no need to verify that the individual has authorized the release of his/her

record to the Congressional member, since the Privacy Act's "blanket routine use" for Congressional inquiries applies.

b. Privileged Release to U.S. Government Officials. DON records may be authenticated and released to U.S. Government officials if they are requesting them in their official capacity on behalf of Federal governmental bodies, whether legislative, executive, administrative, or judicial. To ensure adequate protection of these documents, DON activities shall inform officials receiving records under the provisions of this subparagraph that those records are exempt from public release under FOIA. DON activities shall also mark the records as "Privileged" and "Exempt from Public Disclosure" and annotate any special handling instructions on the records. Because such releases are not made under the provisions of the FOIA, they do not impact on future decisions to release/deny requests for the same records to other requesters. Examples of privileged releases are:

(1) In response to a request from a Committee or Subcommittee of Congress, or to either House sitting as a whole.

(2) To the Federal Courts, whenever ordered by officers of the court as necessary for the proper administration of justice.

(3) To other Federal agencies, both executive and administrative, as determined by the head of a DON activity or designee.

c. State or Local Government Officials. Requests from State or local government officials for DON records are treated the same as any other requester.

d. Non-FOIA Requests from Foreign Governments. Requests from foreign governments that do not invoke the FOIA shall be referred to the appropriate foreign disclosure channels and the requester so notified. See paragraph 14c regarding processing FOIA requests from foreign governments and/or their officials.

14. <u>Processing Specific Kinds of Records</u>. DON activities that possess copies or receive requests for the following kinds of records shall promptly forward the requests to the officials named below and if appropriate apprise the requester of the referral:

a. Classified Records. Executive Order 12,958 governs the classification of records.

(1) Glomar Response. In the instance where a DON activity receives a request for records whose existence or nonexistence is itself classifiable, the DON activity shall refuse to confirm or deny the existence or non-existence of the records. This response is only effective as long as it is given consistently. If it were to be known that an agency gave a "Glomar" response only when records do exist and gave a "no records" response otherwise, then the purpose of this approach would be defeated. A Glomar response is a denial and exemption (b)(1) is cited and appeal rights are provided to the requester.

(2) Processing classified documents originated by another activity. DON activities shall refer the request and copies of the classified documents to the originating activity for processing. If the originating activity simply compiled the classified portions of the document from other sources, it shall refer, as necessary, those portions to the original classifying authority for their review and release determination and apprise that authority of any recommendations they have regarding release. If the classification authority for the information cannot be determined, then the originator of the compiled document has the responsibility for making the final determination. Records shall be identified consistent with security requirements. Only after consultation and approval from the originating activity, shall the requester be apprised of the referral. In most cases, the originating activity will make a determination and respond directly to the requester. In those instances where the originating activity determines a Glomar response is appropriate, the referring agency shall deny the request.

b. Courts-Martial Records of Trial. The release/denial authority for these records is the Office of the Judge Advocate General (Code 20), Washington Navy Yard, Building 111, Washington, DC 20374-1111. Promptly refer the request and/or documents to this activity and apprise the requester of the referral.

c. Foreign Requests/Information

(1) FOIA requests received from foreign governments/ foreign government officials should be processed as follows:

(a) When a DON activity receives a FOIA request for a record in which an affected DoD/DON activity has a substantial interest in the subject matter, or the DON activity receives a FOIA request from a foreign government, a foreign citizen, or an individual or entity with a foreign address, the DON activity receiving the request shall provide a copy of the request to the affected DON activity.

(b) Upon receiving the request, the affected activity shall review the request for host nation relations, coordinate with Department of State as appropriate, and if necessary, provide a copy of the request to the appropriate foreign disclosure office for review. Upon request by the affected activity, the DON activity receiving the initial request shall provide a copy of releasable records to the affected activity. The affected activity may further release the records to its host nation after coordination with Department of State if release is in the best interest of the United States Government. If the record is released to the host nation government, the affected DON activity shall notify the DON activity which initially received the request of the release to the host nation.

(c) Such processing must be done expeditiously so as not to impede the processing of the FOIA request by the DON activity that initially received the request.

(2) Non-U.S. Government Records (i.e., records originated by multinational organizations such as the North Atlantic Treaty Organization (NATO), the North American Air Defense (NORAD) and foreign governments which are under the possession and control of DON shall be coordinated prior to a final release determination being made. Coordination with foreign governments shall be made through the Department of State.

d. Government Accounting Office (GAO) Documents

(1) On occasion, the DON receives FOIA requests for GAO documents containing DON information, either directly from requesters or as referrals from GAO. Since the GAO is outside of the Executive Branch and therefore not subject to FOIA, all FOIA requests for GAO documents containing DON information will be processed by the DON under the provisions of the FOIA.

(2) In those instances when a requester seeks a copy of an unclassified GAO report, DON activities may apprise the requester of its availability from the Director, GAO Distribution Center, ATTN: DHISF, P.O. Box 6015, Gaithersburg, MD 20877-1450 under the cash sales program.

e. Judge Advocate General Manual (JAGMAN) Investigative Records. These records are no longer centrally processed. Accordingly, requests for investigations should be directed to the following officials:

(1) JAGMAN Investigations conducted prior to 1 Jul 95 - to the Judge Advocate General (Code 35), Washington Navy Yard, Suite 3000, 1322 Patterson Avenue, SE, Washington, DC 20374-5066.

(2) Command Investigation - to the command that conducted the investigation.

(3) Litigation-Report Investigation - to the Judge Advocate General (Code 35), Washington Navy Yard, Suite 3000, 1322 Patterson Avenue, SE, Washington, DC 20374-5066.

(4) Court or Board of Inquiry - to the Echelon 2 commander over the command that convened the investigation.

f. Mailing Lists. Numerous FOIA requests are received for mailing lists of home addresses or duty addresses of DON personnel. Processing of such requests is as follows:

(1) Home addresses are normally not releasable without the consent of the individuals concerned. This includes lists of home addresses and military quarters' addresses without the occupant's name [i.e., exemption (b)(6) applies].

(2) Disclosure of lists of names and duty addresses or duty telephone numbers of persons assigned to units that are stationed in foreign territories, routinely deployable, or sensitive, has also been held by the courts to constitute a clearly unwarranted invasion of personal privacy and must be withheld from disclosure under 5 U.S.C. 552(b)(6). General officers and public affairs officers information is releasable. Specifically, disclosure of such information poses a security threat to those service members because it reveals information about their degree of involvement in military actions in support of national policy, the type of Navy and/or Marine Corps units to which they are attached, and their presence or absence from

households. Release of such information aids in the targeting of service members and their families by terrorists or other persons opposed to implementation of national policy. Only an extraordinary public interest in disclosure of this information can outweigh the need and responsibility of the DON to protect the tranquility and safety of service members and their families who repeatedly have been subjected to harassment, threats, and physical injury. Units covered by this policy are:

(a) Those located outside of the 50 States, District of Columbia, Commonwealth of Puerto Rico, Guam, U.S. Virgin Islands, and American Samoa.

(b) Routinely deployable units - Those units that normally deploy from homeport or permanent station on a periodic or rotating basis to meet operational requirements or participate in scheduled exercises. This includes routinely deployable ships, aviation squadrons, operational staffs, and all units of the Fleet Marine Force (FMF). Routinely deployable units do not include ships undergoing extensive yard work or those whose primary mission is support of training, e.g., yard craft and auxiliary aircraft landing training ships.

(c) Units engaged in sensitive operations. Those primarily involved in training for or conduct of covert, clandestine, or classified missions, including units primarily involved in collecting, handling, disposing, or storing of classified information and materials. This also includes units engaged in training or advising foreign personnel. Examples of units covered by this exemption are nuclear power training facilities, SEAL Teams, Security Group Commands, Weapons Stations, and Communications Stations.

(3) Except as otherwise provided, lists containing names and duty addresses of DON personnel, both military and civilian, who are assigned to units in the Continental United States (CONUS) and U.S. territories shall be released regardless of who has initiated the request.

(4) Exceptions to this policy must be coordinated with CNO (N09B30) or CMC (ARAD) prior to responding to requests, including those from Members of Congress. The foregoing policy should be considered when weighing the releasability of the address or telephone number of a specifically named individual.

(5) DON activities are reminded that e-mail addresses that identify an individual who is routinely deployable,

overseas, or assigned to a sensitive unit should not be made available. Additionally, organizational charts for these kinds of units and activities that identify specific members should not be placed on the Internet.

g. Medical Quality Assurance Documents. The Chief, Bureau of Medicine and Surgery (BUMED) is the release/denial authority for all naval medical quality assurance documents as defined by Title 10, United States Code, Section 1102. Requests for medical quality assurance documents shall be promptly referred to BUMED and the requester notified of the referral.

h. Mishap Investigation Reports (MIRs). The Commander, Naval Safety Center (NAVSAFECEN) is the release/denial authority for all requests for mishap investigations or documents which contain mishap information. All requests or documents located which apply shall be promptly referred to the Commander, Naval Safety Center, Code 503, 375 A Street, Norfolk, VA 23511-4399 for action. Telephonic liaison with NAVSAFECEN is encouraged. The requester shall be notified of the referral.

i. National Security Council (NSC)/White House

(1) DON activities that receive requests for records of NSC, the White House, or the White House/Military Office (WHMO) shall process the requests.

(2) DON records in which the NSC or the White House has a concurrent reviewing interest, and NSC, White House, or WHMO records discovered in DON activity files, shall be forwarded to CNO (N09B30), 2000 Navy Pentagon, Washington, DC 20350-2000. N09B30, in turn, will coordinate the request directly with DFOISR, so DFOISR can coordinate the request with NSC, White House, or WHMO. After coordination, the records will be returned to the DON activity for their direct response to the requester. During the interim, DON activities should notify the requester that they are coordinating their request and a response will therefore be delayed.

j. Naval Attache Documents/Information. The Director, Defense Intelligence Agency (DIA) has the responsibility for reviewing for release/denial any naval attache-originated documents/information. Accordingly, FOIA requests for naval attache documents or copies of the documents located in DON files or referred in error to a DON activity shall be promptly referred to the Chief, Freedom of Information Act Staff, Defense Intelligence Agency (SVI-1), Washington, DC 20340-5100 for

action and direct response to the requester. Please ensure that the requester is notified in writing of the transfer to DIA.

k. Naval Audit Service Reports. The Director, Naval Audit Service is the release/denial authority for their reports. All requests or documents located which apply shall be promptly referred to the Director, Naval Audit Service, 5611 Columbia Pike, NASSIF Building, Falls Church, VA 22041-5080 for action. The requester shall be notified of the referral.

l. Naval Criminal Investigative Service (NCIS) Reports. The Director, NCIS is the release/denial authority for all NCIS reports/information. All requests for and copies of NCIS reports located in DON activity files shall be promptly referred to the Director, NCIS (Code OOJF), Washington Navy Yard, Building 111, 716 Sicard Street, SE, Washington, DC 20388-5380 for action and, if appropriate, the requester so notified. Telephonic liaison with NCIS Headquarters is strongly encouraged.

m. Naval Inspector General (NAVINSGEN) Reports

(1) NAVINSGEN is the release/denial authority for all investigations and inspections conducted by or at the direction of NAVINSGEN and for any records held by any command that relate to Navy hotline complaints that have been referred to the NAVINSGEN. Accordingly, such actions shall be promptly referred to the Naval Inspector General (Code OOL), Building 200, Room 100, Washington Navy Yard, 901 M Street, SE, Washington, DC 20374-5006 for action and, if appropriate, the requester so notified.

(2) Requests for local command inspector general reports which have not been referred to NAVINSGEN should be processed by the command that conducted the investigation and NAVINSGEN advised as necessary.

(3) The Deputy Naval Inspector General for Marine Corps Matters (DNIGMC) is the release/denial authority for all investigations conducted by the DNIGMC. Requests for local Marine Corps command Inspector General reports shall be coordinated with the DNIGMC.

n. Naval Nuclear Propulsion Information (NNPI). The Director, Naval Nuclear Propulsion Program [CNO (NOONB)/NAVSEA (08)] is the release/denial authority for all information and requests concerning NNPI. Naval activities receiving such

requests are responsible for searching their files for responsive records. If no documents are located, the naval activity shall respond to the requester and provide CNO (NOONB) with a copy of the request and response. If documents are located, the naval activity shall refer the request, responsive documents, and a recommendation regarding release to the Director, Naval Nuclear Propulsion Program (NOONB), 2000 Navy Pentagon, Washington, DC 20350-2000, who will make the final release determination to the requester, after coordinating the release through DoD activities.

o. Naval Telecommunications Procedures (NTP) Publications. The Commander, Naval Computer and Telecommunications Command is the release/denial authority for NTP publications. All requests or documents located which apply shall be promptly referred to the Commander, Naval Computer and Telecommunications Command (Code NOOJ), 4401 Massachusetts Avenue, NW, Washington, DC 20394-5460 for action and direct response to the requester.

p. News Media Requests

(1) Respond promptly to requests received from news media representatives through public information channels, if the information is releasable under FOIA. This eliminates the requirement to invoke FOIA and may result in timely information being made available to the public.

(2) In those instances where records/information are not releasable, either in whole or in part, or are not currently available for a release consideration, Public Affairs Officers shall promptly advise the requester of where and how to submit a FOIA request.

(3) DON activities receiving and processing requests from members of the press shall ensure that responses are cleared through their public affairs channels.

q. Records Originated by Other Government Agencies

(1) A DON activity may refer a FOIA request for any record that originated in an agency outside the DON or that is based on information obtained from an outside agency to the cognizant agency for direct response to the requester after coordination with the outside agency, if that agency is subject to FOIA. Otherwise, the DON activity must respond to the request.

(2) A DON activity 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 DON 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 DON activity may only respond directly to the requester after coordination with the outside agency.

r. Submitter Documents

(1) When a request is received for a record containing confidential commercial information that was submitted to the Government, the requirements of E.O. 12600 shall apply. Specifically, the submitter shall be notified of the request (telephonically, by letter, or by facsimile) and afforded a reasonable amount of time (anywhere from 2 weeks to a month depending on the circumstances) to present any objections concerning release, unless it is clear there can be no valid basis for objection. For example, the record was provided with actual or presumptive knowledge of the submitter that it would be made available to the public upon request.

(2) The DON activity will evaluate any objections and negotiate with the submitter as necessary. When a substantial issue has been raised, the DON activity may seek additional information from the submitter and afford the submitter and requester reasonable opportunities to present their arguments in legal and substantive issues prior to making an agency determination.

(3) The final decision to disclose information claimed to be exempt under exemption (b)(4) shall be made by an official at least equivalent in rank to the IDA and the submitter advised that he or she may seek a restraining order or take court action to prevent the release. The submitter is given 10 days to take action.

(4) Should the submitter take such action, the requester will be notified and no action will be taken on the request until the outcome of the court action is known.

s. Technical Documents Controlled by Distribution Statements B, C, D, E, F, or X shall be referred to the controlling DoD office for review and release determination.

15. FOIA Appeals/Litigation

a. Appellate Authorities. SECNAV has delegated his appellate authority to the JAG and the DONGC to act on matters under their cognizance. Their responsibilities include adjudicating appeals made to SECNAV on: denials of requests for copies of DON records or portions thereof; disapproval of a fee category claim by a requester; disapproval of a request to waive or reduce fees; disputes regarding fee estimates; reviewing determinations not to grant expedited access to agency records, and reviewing "no record" determinations when the requester considers such responses adverse in nature. They have the authority to release or withhold records, or portions thereof; to waive or reduce fees; and to act as required by SECNAV for appeals under reference (a) and this instruction. The JAG has further delegated this appellate authority to the Assistant Judge Advocate General (Civil Law). The DONGC has further delegated this appellate authority to the Principal Deputy General Counsel, the Deputy General Counsel, and the Associate General Counsel (Management).

(1) In their capacity, appellate authorities will serve as principal points of contact on DON FOIA appeals and litigation; receive and track FOIA appeals and ensure responses are made in compliance with references (a), (b), (c) and this instruction; complete responsive portions of the Annual FOIA Report that addresses actions on appeals and litigation costs during the fiscal year and submit to CNO (N09B30); provide CNO (N09B30) with a copy of all appeal determinations as they are issued; and keep CNO (N09B30) informed in writing of all FOIA lawsuits as they are filed against the DON. Appellate authorities shall facsimile a copy of the complaint to CNO (N09B30) for review and provide updates to CNO (N09B30) to review and disseminate to DFOISR.

(2) OGC's cognizance: Legal advice and services to SECNAV and the Civilian Executive Assistants on all matters affecting DON; legal services in subordinate commands, organizations, and activities in the areas of business and commercial law, real and personal property law, intellectual property law, fiscal law, civilian personnel and labor law, environmental law, and in coordination with the JAG, such other legal services as may be required to support the mission of the Navy and the Marine Corps, or the discharge of the General Counsel's responsibilities; and conducting litigation involving the areas enumerated above and oversight of all litigation affecting the DON.

(3) JAG's cognizance: In addition to military law, all matters except those falling under the cognizance of the DONGC.

b. Appellants may file an appeal if they have been denied information in whole or in part; have been denied a waiver or reduction of fees; have been denied/have not received a response within 20 working days; or received a "no record" response or wish to challenge the "adequacy of a search" that was made. Appeal procedures also apply to the disapproval of a fee category claim by a requester, disputes regarding fee estimates, review of an expedited basis determination not to grant expedited access to agency records, or any determination found to be adverse in nature by the requester.

c. Action by the Appellate Authority

(1) Upon receipt, JAG (34) or Assistant to the General Counsel (FOIA) will promptly notify the IDA of the appeal. In turn, the IDA will provide the appellate authority with the following documents so that a determination can be made: a copy of the request, responsive documents both excised and unexcised, a copy of the denial letter, and supporting rationale for continued withholding. IDAs shall respond to the appellate authority within 10 working days.

(2) Final determinations on appeals normally shall be made within 20 working days after receipt. When the appellate authority 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.

(3) If tne appeal is received by the wrong appellate authority, the time limits do not take effect until it is received by the right one. If, however, the time limit for responding cannot be met, the appellate authority shall advise the appellant that he/she may consider his/her administrative remedies exhausted. However, he/she may await a substantive response without prejudicing his/her right of judicial remedy. Nonetheless, the appellate authority will continue to process the case expeditiously, whether or not the appellant seeks a court order for release of records. In such cases, to copy of the response will be provided to the Department of Justice (DOJ).

d. Addresses for Filing Appeals:

(1) General Counsel of the Navy, 720 Kennon Street SE, Room 214, Washington, DC 20374-5012, or

(2) Judge Advocate General, Washington Navy Yard, 1322 Patterson Avenue SE, Suite 3000, Washington, DC 20374-5066.

e. Appeal Letter Requirements. The appellant shall file a written appeal with the cognizant appellate authority (i.e., DONGC or JAG). The appeal should include a copy of the DON response letter and supporting rationale on why the appeal should be granted.

f. Consultation/Coordination

(1) The Special Assistant for Naval Investigative Matters and Security [CNO (N09N)] may be consulted to resolve inconsistencies or disputes involving classified records.

(2) Direct liaison with officials within DON and other interested Federal agencies is authorized at the discretion of the appellate authority, who also coordinates with appropriate DoD and DOJ officials.

(3) SECNAV, appropriate Assistant or Deputy Assistant Secretaries, and CNO (N09B30) shall be consulted and kept advised of cases with unusual implications. CHINFO shall be consulted and kept advised on cases involving public affairs implications.

(4) Final refusal involving issues not previously resolved or that the DON appellate authority knows to be inconsistent with rulings of other DoD components ordinarily should not be made before consultation with the DoD Office of General Counsel (OGC).

(5) Tentative decisions to deny records that raise new and significant legal issues of potential significance to other agencies of the Government shall be provided to the DoD OGC.

g. Copies of Final Appeal Determinations. Appellate authorities shall provide copies of final appeal determinations to the activity affected and to CNO (N09B30) as appeals are decided.

h. Denying an Appeal. The appellate authority must render his/her decision in writing with a full explanation as to why the appeal is being denied along with a detailed explanation of the basis for refusal with regard to the applicable statutory exemption(s) invoked. With regard to denials involving classified information, the final refusal should explain that a declassification review was undertaken and based on the governing Executive Order and implementing security classification guides (identify the guides), the information cannot be released and that information being denied does not contain meaningful portions that are reasonably segregable. In all instances, the final denial letter shall contain the name and position title of the official responsible for the denial and advise the requester of the right to seek judicial review.

i. Granting an Appeal. The appellate authority must render his/her decision in writing. When an appellate authority makes a determination to release all or a portion of records withheld by an IDA, a copy of the releasable records should be promptly forwarded to the requester after compliance with any procedural requirements, such as payment of fees.

j. Processing Appeals Made Under PA and FOIA. When denials have been made under the provisions of PA and FOIA, and the denied information is contained in a PA system of records, the appeal shall be processed under both PA and FOIA. If the denied information is not maintained in a PA system of records, the appeal shall be processed under FOIA.

k. Response Letters

(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.

(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:

(a) 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 the provisions of the FOIA, and with respect to other issues appealed for which an adverse determination was made.

(b) 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.

(c) The final denial shall include the name and title or position of the official responsible for the denial.

(d) 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.

(e) When the denial is based upon an exemption (b)(3) statute, 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.

(f) The response shall advise the requester of the right to judicial review.

1. Time Limits/Requirements

(1) A FOIA appeal has been received by a DON activity when it reaches the appellate authority having jurisdiction. Misdirected appeals should be referred expeditiously to the proper appellate authority.

(2) 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 the 60 day period, the case may be considered closed. However, exceptions may be considered on a case-by-case basis.

(3) 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. Requests and responsive records that are denied shall be retained for a period of 6 years to meet the statute of limitations requirement.

(4) Final determinations on appeals normally shall be made within 20 working days after receipt. When a DON appellate authority 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 paragraph 11f(2)].

(5) If additional time is needed due to unusual circumstances, 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.

(6) 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, they may consider their administrative remedies exhausted. They may, however, without prejudicing their right of judicial remedy, await a substantive response. The appellate authority shall continue to process the case expeditiously.

(m) FOIA litigation: The appellate authority is responsible for providing CNO (N09B30) with a copy of any FOIA litigation filed against the DON and any subsequent status of the case. CNO (N09B30) will, in turn, forward a copy of the complaint to DFOISR for their review.

16. Annual FOIA Report

a. Background. The Annual FOIA Report is compiled on a fiscal year basis (1 October through 30 September).

b. DON activities shall use enclosure (5) for FOIA fee/time computations and enclosure (6) for technical data fee/time computations.

c. The Report Control System (RCS) for this report is DD-DA&M(A)1365(5720). A copy of DD 2564 and the Annual FOIA Report Instructions are provided at enclosures (7) and (8).

d. Enclosures (9) and (10) are provided for use in compiling the Annual FOIA Report. The DoD Composite Rate Schedule, which is used to compute military personnel costs, is

published annually and will be posted on the Navy FOIA website for use in compiling statistics.

e. Report dates. CNO (N09B30) is required to submit the consolidated DON report to DFOISR by 30 November of each year. To facilitate the compilation and analysis of the DON feeder reports, the following schedule is established:

(1) By 25 October of each year: IDAs subordinate to CMC and Echelon 2 commands will submit their feeder reports on DD 2564 to CMC or the Echelon 2 command (as applicable). The report may be faxed. At the discretion of the Echelon 2 command, negative responses may be submitted verbally, by fax, or e-mail.

(2) By 10 November of each year: CMC (ARAD), Echelon 2, JAG, and OGC will submit their consolidated reports on DD 2564 for their headquarters and subordinate activities to CNO (N09B30). The report may be faxed. (NOTE: items 3 and 4 will be responded to by the appellate authorities: JAG and DONGC.)

(3) Exempt from reporting. Units afloat and aviation squadrons who have not received or responded to any FOIA requests during the reporting period are exempt from reporting. Negative reports are not required.

f. Electronic Publication. The consolidated DON Annual FOIA Report will be made available to the public in either paper or electronic format. The electronic format will be posted on the Navy FOIA website. DON activities may place their individual FOIA report submission on their website.

17. Education and Training

a. CNO (N09B30), CMC (ARAD), JAG, OGC, and Echelon 2 FOIA coordinators are responsible for ensuring their personnel have a general understanding and appreciation of the DON FOIA Program. The purpose of educational and training programs is to promote a positive attitude among DON personnel and raise the level of understanding and appreciation of the DON FOIA Program, thereby improving the interaction with members of the public and improving the public trust in DON. Training programs should be designed to fit the particular requirements of personnel and dependent upon their degree of involvement in the implementation of this instruction. The program should be designed to accomplish the following objectives:

(1) Familiarize personnel with the requirements of the FOIA and its implementation by this instruction;

(2) Instruct personnel who act in FOIA matters concerning the provisions of this instruction, advising them of the legal hazards involved and the strict prohibition against arbitrary and capricious withholding of information;

(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; and,

(4) Apprise personnel of the penalties of noncompliance with the FOIA.

b. FOIA coordinators must initially receive specialized training on the FOIA. Thereafter, it is recommended they attend yearly updates to keep abreast of the changes to the FOIA program. Training is available from both government and non-governmental sources. Consult the Navy FOIA website for a current schedule of available training, training sources, yearly updates, and sample training packages.

c. Coordinate with CNO (N09B30) and CMC (ARAD), as appropriate, to avoid duplication and to obtain maximum distribution and effectiveness. CNO (N09B30) and CMC (ARAD) are available to assist in coordinating, formulating, providing, or identifying FOIA training sources.

d. Resource materials

(1) The Navy FOIA website has downloadable training materials.

(2) "Freedom of Information Act Guide and Privacy Act Overview" published annually by DOJ, provides an in-depth analysis of the FOIA supported by case law. See Navy FOIA website.

(3) "FOIA Update" is a quarterly newsletter published by the DOJ which addresses major FOIA issues, has a "Questions and Answers" column, and highlights upcoming training. This publication is available on the DOJ FOIA website, which is linked from the Navy FOIA website.

18. **Records Retention**. FOIA records are maintained by fiscal year and are not permanent records. Reference (g) [See Standard Subject Identification Code (SSIC) 5720] sets forth the approved records disposal schedule for FOIA records.

19. **Action**

a. Echelon 2 Commands and Headquarters Marine Corps: Within 180 days, issue a supplementing instruction that implements this instruction. The supplementing instruction need not duplicate the SECNAVINST, but rather highlight those matters unique to the activity (i.e., designate the activity's FOIA Coordinator, highlight activity processing procedures and reporting requirements, address FOIA fee remittance and receipt procedures, etc.).

b. All Addressees: Designate a FOIA coordinator who has responsibility for the FOIA program. Ensure his/her name, complete mailing address, telephone and fax numbers (commercial and DSN) are provided to the Echelon 2 or CMC (ARAD) FOIA manager. Echelon 2 and CMC (ARAD) shall ensure that addresses for their FOIA offices are posted on their FOIA websites. [Note: For individuals overseas, routinely deployable, or in sensitive units, list "FOIA Coordinator" in place of the name.]

20. **Report and Forms**

a. The Annual FOIA Report is assigned report control symbol DD-PA(A)1365 (5720) and is approved per SECNAVINST 5214.2B. Because the report is mandated by statute, DON activities shall continue collecting statistics until notification that the report has been eliminated.

b. DD 2086, Record of Freedom of Information (FOI) Processing Cost, Jul 1997, enclosure (5); DD 2086-1, Record of Freedom of Information Act (FOI) Processing Cost for Technical Data, Jul 1997, enclosure (6); DD 2564, Annual Report Freedom of Information Act, Aug 1998, enclosure (7); FOIA Case Worksheet, enclosure (9); and Annual Report Compilation Worksheet,

enclosure (10) are downloadable from the Navy FOIA website and may be locally reproduced.

Richard Danzig
Secretary of the Navy

Distribution:
SNDL Parts 1 and 2
MARCORPS PCN 71000000000 & 71000000100

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FOIA DEFINITIONS AND TERMS

1. **(a)(1) Materials.** Section (a)(1) of the FOIA requires publication in the Federal Register of descriptions of agency organizations, functions, substantive rules, and statements of general policy.

2. **(a)(2) Materials.** Section (a)(2) of the FOIA requires that certain materials routinely be made available for public inspection and copying. The (a)(2) materials are commonly referred to as "reading room" materials and are required to be indexed to facilitate public inspection. (a)(2) materials consist of:

a. (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, that may be cited, used, or relied upon as precedents in future adjudications.

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

c. (a)(2)(C) records. Administrative staff manuals and instructions, or portions thereof, that establish DON 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 DON activity. Examples of manuals and instructions not normally made available are:

(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.

(2) Operations and maintenance manuals and technical information concerning munitions, equipment, systems, and foreign intelligence operations.

d. (a)(2)(D) records. Those (a)(3) 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. DON activities shall decide on a case-by-case basis whether records fall into this category based

on the following factors: previous experience of the DON activity with similar records; particular circumstances of the records involved, including their nature and the type of information contained in them; and/or the identity and number of requesters and whether there is widespread press, historic, or commercial interest in the records.

(1) 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. DON activities may remove the records from this access medium when the appropriate officials determine that access is no longer necessary.

(2) Should a requester submit a FOIA request for FOIA-processed (a)(2) records and insist that the request be processed under FOIA, DON activities shall process the FOIA request. However, DON activities have no obligation to process a FOIA request for (a)(2)(A), (B) and (C) records because these records are required to be made public and not FOIA-processed under paragraph (a)(3) of the FOIA.

e. However, agency records that are withheld under FOIA from public disclosure, based on one or more of the FOIA exemptions, do not qualify as (a)(2) materials and need not be published in the Federal Register or made available in a library reading room.

3. **(a)(3) Materials.** Agency records which are processed for release under the provisions of the FOIA.

4. **Administrative Appeal.** A request made by a FOIA requester asking the appellate authority (JAG or OGC) to reverse a decision to: withhold all or part of a requested record; deny a fee category claim by a requester; deny a request for expedited processing due to demonstrated compelling need under paragraph 6g of this instruction; deny a request for a waiver or reduction of fees; deny a request to review an initial fee estimate; and confirm that no records were located during the initial search. FOIA requesters may also appeal a non-response to a FOIA request within the statutory time limits.

5. **Affirmative Information Disclosure.** This is where a DON activity makes records available to the public on its own initiative. In such instance, the DON activity has determined in advance that a certain type of records or information is

likely to be of such interest to members of the public, and that it can be disclosed without concern for any FOIA exemption sensitivity. Affirmative disclosures can be of mutual benefit to both the DON and the members of the public who are interested in obtaining access to such information.

6. **Agency Record**. Agency records are either created or obtained by an agency and under agency control at the time of the FOIA request. Agency records are stored as various kinds of media, such as:

a. Products of data compilation (all books, maps, 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 the Navy possession and control at the time the FOIA request is made.

b. Care should be taken not to exclude records from being considered agency records, unless they fall within one of the following categories:

(1) Objects or articles, such as structures, furniture, paintings, three-dimensional models, vehicles, equipment, parts of aircraft, ships, etc., whatever their historical value or value as evidence.

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

(3) Personal 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.

(4) A record must exist and be in the possession and control of the DON at the time of the request to be considered subject to this instruction and the FOIA. There is no

obligation to create, compile, or obtain a record to satisfy a FOIA request.

(5) Hard copy or electronic records, which are subject to FOIA requests under 5 U.S.C. 552(a)(3), and which 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, DON activities 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 process the request under FOIA.

7. **Appellate Authority**. SECNAV has delegated the OGC and JAG to review administrative appeals of denials of FOIA requests on his behalf and prepare agency paperwork for use by the DOJ in defending a FOIA lawsuit. JAG is further authorized to delegate this authority to a designated Assistant JAG. The authority of OGC is further delegated to the Principal Deputy General Counsel, the Deputy General Counsel, and the Associate General Counsel (Management).

8. **Discretionary Disclosure**. The decision to release information that could qualify for withholding under a FOIA exemption, but upon review the determination has been made that there is no foreseeable harm to the Government for releasing such information. Discretionary disclosures do not apply to exemptions (b)(1), (b)(3), (b)(4), (b)(6) and (b)(7)(C).

9. **Electronic Record**. Records (including e-mail) which are created, stored, and retrieved by electronic means.

10. **Exclusions**. The FOIA contains three exclusions (c)(1), (c)(2) and (c)(3) which expressly authorize Federal law enforcement agencies for especially sensitive records under certain specified circumstances to treat the records as not subject to the requirements of the FOIA.

11. **Executive Order (E.O.) 12,958**. Replaced E.O. 12,356 on October 14, 1995 and is the basis for claiming that information is currently and properly classified under (b)(1) exemption of the FOIA. It sets forth new requirements for classifying and declassifying documents. It recognizes both the right of the public to be informed about the activities of its government and the need to protect national security information from unauthorized or untimely disclosure.

12. **Federal Agency**. 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.

13. **5 U.S.C. 552, Freedom of Information Act (FOIA)**. An access statute that pertains to agency records of the Executive Branch of the Federal Government, including the Executive Office of the President and independent regulatory agencies. (Note: Records maintained by State governments, municipal corporations, by the courts, by Congress, or by companies and private citizens do not fall under this Federal statute).

14. **FOIA Exemptions**. There are nine exemptions that identify certain kinds of records/information that qualify for withholding under FOIA. See enclosure (4) for a detailed explanation of each exemption.

15. **FOIA Fee Definitions**. See enclosure (3).

16. **FOIA Request**. A written request for DON records, 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 references (a), (b), (c), and/or this instruction. FOIA requests can be made for any purpose whatsoever, with no showing of relevancy required. Because the purpose for which records are sought has no bearing on the merits of the request, FOIA requesters do not have to explain or justify their requests. Written requests may be received by postal service or other commercial delivery means, by facsimile or electronically.

17. **Glomar Response**. Refusal by the agency to either confirm or deny the existence or non-existence of records responsive to a FOIA request. See exemptions (b)(1), (b)(6), and (b)(7)(C) at enclosure (4).

18. **Initial Denial Authority (IDA)**. SECNAV has delegated authority to a limited number of officials to act on his behalf to withhold records under their cognizance that are requested under the FOIA for one or more of the nine categories of records exempt from mandatory disclosure; to deny a fee category claim by a requester; to deny a request for expedited processing due to demonstrated compelling need; to deny or grant a request for

waiver or reduction of fees when the information sought relates to matters within their respective geographical areas of responsibility or chain of command; fees; to review a fee estimate; and to confirm that no records were located in response to a request. IDAs may also grant access to requests.

19. **Mosaic or Compilation Response.** The concept that apparently harmless pieces of information when assembled together could reveal a damaging picture. See exemption (b)(1) at enclosure (4).

20. **Perfected Request.** A request which meets the minimum requirements of the FOIA to be processed and is received by the DON activity having possession and control over the documents/information.

21. **Public Domain.** Agency records released under the provisions of FOIA and this instruction to a member of the public.

22. **Public Interest.** The interest in obtaining official information that sheds light on a DON activity's performance of its statutory duties because the information falls within the statutory purpose of the FOIA to inform citizens 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.

23. **Reading Room.** Location where (a)(2) materials are made available for public inspection and copying.

24. **Release Authorities.** Commanding officers and heads of Navy and Marine Corps shore activities or their designees are authorized to grant requests on behalf of SECNAV for agency records under their possession and control for which no FOIA exemption applies. As necessary, they will coordinate releases with other officials who may have an interest in the releasability of the record.

25. **Reverse FOIA.** When the "submitter" of information, usually a corporation or other business entity, that has supplied the agency with data on its policies, operations and products, seeks to prevent the agency that collected the information from revealing the data to a third party in response to the latter's FOIA request.

26. **Technical Data.** Recorded information, regardless of form or method of the recording, of a scientific or technical nature (including computer software documentation).

27. **Vaughn Index.** Itemized index, correlating each withheld document (or portion) with a specific FOIA exemption(s) and the relevant part of the agency's nondisclosure justification. The index may contain such information as: date of document; originator; subject/title of document; total number of pages reviewed; number of pages of reasonably segregable information released; number of pages denied; exemption(s) claimed; justification for withholding; etc. FOIA requesters are not entitled to a Vaughn index during the administrative process.

FOIA FEES

1. Background

a. The DON follows the uniform fee schedule developed by DoD and established to conform with the Office of Management and Budget's (OMB's) Uniform Freedom of Information Act Fee Schedule and Guidelines.

b. Fees 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, which does not supersede the collection of fees under the FOIA.

c. FOIA fees do not supersede fees chargeable under a statute specifically providing for setting the level of fees for particular types of records. For example, 5 U.S.C. 552 (a)(4)(a)(vi) enables a Government agency such as the Government Printing Office (GPO) or the National Technical Information Service (NTIS), to set and collect fees. DON activities 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 GPO or NTIS, they inform requesters of the steps necessary to obtain records from those sources.

2. FOIA Fee Terms

a. **"Direct costs"** means those expenditures a DON activity 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 in this enclosure. Not included in direct costs are overhead expenses such as costs of space, heating or lighting the facility in which the records are stored.

b. **"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 activity'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 DON activity 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 activity personnel with the object of reformulating the request to meet his or her needs at a lower cost.

c. **"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. DON activities 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.

d. **"Search"** refers to 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. DON activities should ensure that searches are done in the most efficient and least expensive manner so as to minimize costs for both the activity and the requester. For example, activities 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.

(1) DON activities may charge for time spent searching for records, even if that search fails to locate records responsive to the request.

(2) DON activities may also charge search and review (in the case of commercial requesters) time if records located are determined to be exempt from disclosure.

(3) In practice, if the DON activity 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 activity personnel with the object of reformulating the request to meet his or her needs at a lower cost.

3. Categories of Requesters - Applicable Fees

a. **Commercial Requesters** 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, DON activities must determine the use to which a requester will put the documents requested. Moreover, where an activity 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, it should seek additional clarification before assigning the request to a specific category.

(1) 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.

(2) When DON activities 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 2 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.

b. **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.

(1) 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.

(2) 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 research.

(3) Fees shall be waived or reduced in the public interest if criteria of paragraph 7 of this enclosure have been met.

c. **Non-commercial Scientific Institution** refers to an institution that is not operated on a "commercial" basis 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.

(1) Fees shall be limited to only reasonable standard charges for document duplication (excluding 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.

(2) 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 or scientific research.

d. **Representative of the news media**

(1) 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 DON activities may also look to the past publication record of a requester in making this determination.

(2) To be eligible for inclusion in this category, a requester must meet the criteria established 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).

(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.

(4) 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. Fees shall be waived or reduced if the fee waiver criteria have been met.

e. **All Other Requesters**. DON activities shall charge requesters who do not fit into any of the categories described above fees which recover the full direct cost of searching for and duplicating records, except that the first 2 hours of search time and the first 100 pages of duplication shall be furnished without charge. Requesters must reasonably describe the records sought. Requests from

subjects about themselves will continue to be treated under the fee provisions of the Privacy Act of 1974, which permit fees only for duplication. DON activities 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.

4. **Fee Declarations:** Requesters should submit a fee declaration appropriate for the below categories, if fees are expected to exceed the minimum fee threshold of $15.00.

a. **Commercial.** Requesters should indicate a willingness to pay all search, review and duplication costs.

b. **Educational or Noncommercial Scientific Institution or News Media.** Requesters should indicate a willingness to pay duplication charges in excess of 100 pages if more than 100 pages of records are desired.

c. **All Others.** Requesters should indicate a willingness to pay assessable search and duplication costs if more than 2 hours of search effort or 100 pages of records are desired.

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

5. **Fee Restrictions**

a. No fees may be charged by any DON activity 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, activities shall provide the first 2 hours of search time, and the first 100 pages of duplication without charge. For example, for a request (other than one from a commercial requester) that involved 2 hours and 10 minutes of search time, and resulted in 105 pages of documents, an activity would determine the cost of only 10 minutes of search time, and only five pages of reproduction. If this processing cost was equal to, or less than, the cost to the activity for billing the requester and processing the fee collected, no charges would result.

b. Requesters receiving the first 2 hours of search and the first 100 hundred pages of duplication without charge are entitled to such only once per request. Consequently, if a DON activity, after completing its portion of a request, finds it necessary to refer the request to a

subordinate office, another DON activity, or another Federal agency to action their portion of the request, the referring activity shall inform the recipient of the referral of the expended amount of search time and duplication cost to date.

c. The elements to be considered in determining the "cost of collecting a fee" are the administrative costs to the DON activity 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 activity determinations.

d. 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.

e. In the case of computer searches, the first 2 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 (2 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.

6. Fee Assessment

a. 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.

b. In order to be as responsive as possible to FOIA requests while minimizing unwarranted costs to the taxpayer, DON activities shall adhere to the following procedures:

(1) Analyze each request to determine the category of the requester. If the activity's determination regarding the category of the requester is different than that claimed by the requester, the activity shall:

(a) 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 DON activity shall render a final category determination, and notify the requester of such determination, to include normal administrative appeal rights of the determination.

(b) 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 activity.

c. Estimate of Fees. DON activities 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 activities, 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 the activity's 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.

d. Advance Payment of Fees. DON activities may not require advance payment of any fee (i.e., before work is commenced or continued on a request) unless the requester has failed to pay fees in a timely fashion (i.e., 30 calendar days from the date of the assessed billing in writing), or the activity has determined that the fee will exceed $250.00.

e. When a DON activity estimates or determines that allowable charges that a requester may be required to pay are likely to exceed $250.00, the activity 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 payment history.

f. 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 DON activity 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 DON activity begins to process a new or pending request from the requester. Interest will be at the rate prescribed by 31 U.S.C. 3737 and confirmed with respective finance and accounting offices.

g. After all the work is completed on a request, and the documents are ready for release, DON activities may requires payment before forwarding the documents, particularly for those requesters who have no payment history, or for those requesters who have failed to previously pay a fee in a timely fashion (i.e., within 30 calendar days from the date of the billing).

h. DON activities may charge for time spent searching for records, even if that search fails to locate records responsive to the request. DON activities 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 DON activity 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 activity personnel with the object of reformulating the request to meet his or her needs at a lower cost.

i. **Aggregating Requests**. Except for requests that are for a commercial use, a DON activity may not charge for the first 2 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 an activity 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 activity 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 activities should have a solid basis for determining that aggregation is warranted in such cases. DON activities 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 an activity aggregate multiple requests on unrelated subjects

j. FOIA Fees Must Be Addressed in Response Letters. DON activities shall ensure that requesters receive a complete breakout of all fees which are charged and apprised of the "Category" in which they have been placed. For example: "We are treating you as an 'All Other Requester.' As such, you are entitled to 2 free hours of search and 100 pages of reproduction, prior to any fees being assessed. We have expended an additional 2 hours of search at $25.00 per hour and an additional 100 pages of reproduction, for a total fee of $65.00."

7. Fee Waivers. Documents shall be furnished without charge, or at a charge reduced below fees assessed to the categories of requesters, when the DON activity 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 DON/DoD and is not primarily in the commercial interest of the requester. When assessable costs for a FOIA request total $15.00 or less, fees shall be waived automatically for all requesters, regardless of category. 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:

a. 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."

b. The subject of the request. DON activities 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 DON/DoD. Requests for records in the possession of the DON 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 DON/DoD. 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 DON/DoD activity. Similarly, disclosures of records of considerable age may or may not bear directly on the current activities of the DON/DoD, 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 DON/DoD, 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 DON/DoD.

c. The informative value of the information to be disclosed. This factor requires a close analysis of the substantive contents of a record, or portion of the record, to determine whether disclosure is meaningful, and shall inform the public on the operations or activities of the DON. While the subject of a request may contain information that concerns operations or activities of the DON, 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 DON 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 DON.

d. 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.

e. The significance of the contribution to public understanding. In applying this factor, DON activities 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. DON activities shall not make value judgments as to whether the information is important enough to be made public.

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

(1) **The existence and magnitude of a commercial interest.** If the request is determined to be of a commercial interest, DON activities 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, DON activities may draw inference from the requester's identity and circumstances of the request. Activities 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.

(2) **The primary interest in disclosure.** Once a requester's commercial interest has been determined, DON activities 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.

h. 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, DON activities should rule in favor of the requester.

i. The following additional circumstances describe situations where waiver or reduction of fees are most likely to be warranted:

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

(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).

8. Payment of Fees

a. Normally, fees will be collected at the time of providing the documents to the requester when the requester specifically states that the costs involved shall be acceptable or acceptable up to a specified limit that covers the anticipated costs, and the fees do not exceed $250.00.

b. However, after all work is completed on a request, and the documents are ready for release, DON activities 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).

c. When a DON activity estimates or determines that allowable charges that a requester may be required to pay are likely to exceed $250.00, the activity 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.

d. Advance payment of a fee is also applicable when a requester has previously failed to pay fees in a timely fashion (i.e., 30 calendar days) after being assessed in writing by the activity. Further, 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 DON activity 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 activity begins to process a new or pending request from the requester. Interest will be at the rate prescribed in 31 U.S.C. 3717 and confirmed with respective finance and accounting offices.

9. Effect of the Debt Collection Act of 1982 (P.L. 97-365). The Debt Collection Act of 1982 provides for a minimum annual rate of interest to be charged on overdue debts owed the Federal Government. DON activities 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. DON activities 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, DON activities may submit the debt to respective finance and accounting offices for collection.

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

11. Computation of Fees

a. It's imperative that DON activities compute all fees to ensure accurate reporting in the Annual FOIA Report, but ensure that only applicable fees be charged to the requester. For example, although we calculate

correspondence and preparation costs, these fees are not recoupable from the requester.

b. DD 2086, Record of Freedom of Information (FOI) Processing Cost, should be filled out accurately to reflect all processing costs, as requesters may solicit a copy of that document to ensure accurate computation of fees. Costs shall be computed on time actually spent. Neither time-based nor dollar-based minimum charges for search, review and duplication are authorized.

12. FOIA Fee Schedule. The following fee schedule shall be used to compute the search, review (in the case of commercial requesters) and duplication costs associated with processing a given FOIA request. The appropriate fee category of the requester shall be applied before computing fees.

a. Manual Search

Type	Grade	Hourly Rate
Clerical	E9/GS8 and below	$12.00
Professional	O1-O6/GS9-GS15	$25.00
Executive	O7/GS16/ES1 and above	$45.00

b. Computer Search. Fee assessments for computer search consist of two parts; individual time (hereafter referred to as human time) and machine time.

(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).

(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 DON activities lease computers, the services charged by the lessor shall not be passed to the requester under the FOIA.

c. Duplication

Type	Cost per Page
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)

d. Review Time (in the case of commercial requesters, only)

Type	Grade	Hourly Rate
Clerical	E9/GS8 and below	$12.00
Professional	O1-O6/GS9-GS15	$25.00
Executive	O7/GS16/ES1 and above	$45.00

e. 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.

f. 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.

g. Costs for Special Services. Complying with requests for special services is at the discretion of the DON activity. Neither the FOIA nor its fee structure cover these kinds of services. Therefore, DON activities may recover the costs of special services requested by the

requester after agreement has been obtained in writing from the requester to pay for such fees as certifying that records are true copies, sending records by special methods such as express mail, etc.

13. Collection of Fees and Fee Rates for Technical Data

a. 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.

b. DON activities 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 information released under FOIA.

c. **Waiver**. DON activities shall waive the payment of costs required in paragraph 13a of this enclosure which are greater than the costs that would be required for release of this same information under the FOIA if:

(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, DON activities 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;

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

(3) The DON activity determines in accordance with paragraph 7 that such a waiver is in the interest of the United States.

d. Fee Rates

(1) Manual Search

Type	Grade	Hourly Rate
Clerical	E9/GS8 and below	$13.25
Clerical Minimum Charge)		$8.30
Professional	O1 to O6/ GS9 to GS15	**
Executive	O7/GS16/ES-1 and above	**

** Rate to be established at actual hourly rate prior to search. A minimum charge will be established at 1/2 Minimum Charge)

(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 for manual search) 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.

(3) Duplication

Type	Cost
Aerial photograph, maps, specifications, permits, charts, blueprints, and other technical engineering documents	$2.50
Engineering data (microfilm)	
Aperture cards	
Silver duplicate negative, per card	$ .75
When key punched and verified, per card	$ .85
Diazo duplicate negative, per card	$ .65
When key punched and verified, per card	$ .75
35mm roll film, per frame	$ .50
16mm roll film, per frame	$ .45
Paper prints (engineering drawings), each	$1.50
Paper reprints of microfilm indices, each	$ .10

(4) Review Time

Type	Grade	Hourly Rate
Clerical	E9/GS8 and below	$13.25
Clerical Minimum Charge)		$8.30
Professional	O1 to O6/ GS9 to GS15	**
Executive	O7/GS16/ES1 or higher	**

** Rate to be established at actual hourly rate prior to search.
A minimum charge will be established at 1/2 Minimum Charge)

(5) Other Technical Data Records. Charges for any additional services not specifically provided in subsection 13d above, consistent with Volume 11A of DoD 7000.14-R (NOTAL) shall be made by DON activities at the following rates:

Minimum charge for office copy up to six images)	$3.50
Each additional image	$ .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

14. Processing FOIA Fee Remittances

a. Payments for FOIA charges, less fees assessed for technical data or by a Working Capital Fund or a Non-Appropriated Fund (NAF) activity, shall be made payable to the U.S. Treasurer and deposited in Receipt Account Number 172419.1203.

b. Payments for fees assessed for technical data shall be made payable to the DON activity that incurred the costs and will be deposited directly into the accounting line item from which the costs were incurred.

c. Payments for fees assessed by Working Capital Fund or Non-Appropriated Fund (NAF) activities shall be made payable to the DON activity and deposited directly into their account.

FOIA EXEMPTIONS

1. Background: The FOIA is a disclosure statute whose goal is an informed citizenry. Accordingly, records are considered to be releasable, unless they contain information that qualifies for withholding under one or more of the nine FOIA exemptions, and there would be no foreseeable harm to an interest provided by one or more of these exemptions. The exemptions are identified as 5 U.S.C. 552 (b)(1) through (b)(9).

2. Ground Rules

a. Identity of Requester: 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 in systems notice and by a FOIA exemption.

b. Reasonably Segregable: Even though a document may contain information which qualifies for withholding under one or more FOIA exemptions, FOIA requires that all "reasonably segregable" information be provided to the requester, unless the segregated information would have no meaning. In other words, redaction is not required when it would reduce the balance of the text to "unintelligible gibberish."

c. Discretionary Release: A discretionary release of a record to one requester may 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.

d. Initial Denial Authority (IDA) Actions: The decision to withhold information in whole or in part based on one or more of the FOIA exemptions requires the signature of an IDA. See listing of IDAs in basic instruction.

3. In-depth Analysis of FOIA Exemptions: An in-depth analysis of the FOIA exemptions is addressed in the DOJ's annual publication, "Freedom of Information Act Guide & Privacy Act Overview." A copy is available on the DOJ's FOIA website (see Navy FOIA website at http://www.ogc.secnav.hq.navy.mil/foia/index.html for easy access).

4. A brief explanation of the meaning and scope of the nine FOIA exemptions follows:

a. 5 U.S.C. 552 (b)(1): 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.

(1) 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 based on the Executive Order on classification (i.e., E.O. 12,958) and/or a security classification guide. The procedures for reclassification are addressed in the Executive Order.

(2) If the information qualifies as exemption (b)(1) information, there is no discretion regarding its release. In addition, this exemption shall be invoked when the following situations are apparent:

(a) Glomar Response: The fact of the existence or nonexistence of a record would itself reveal classified information. In this situation, DON activities 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.

(b) Compilation: 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 is not otherwise revealed in the individual items of information.

b. 5 U.S.C. 552 (b)(2): Those related solely to the internal personnel rules and practices of the DON and its activities. This exemption is entirely discretionary and has two profiles, high (b)(2) and low (b)(2):

(1) High (b)(2) are records 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 DON. For example:

(a) those operating rules, guidelines, and manuals for DON investigators, inspectors, auditors, or examiners that must remain privileged in order for the DON activity fulfill a legal requirement;

(b) 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;

(c) computer software, the release of which would allow circumvention of a statute or DON 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.

(2) Discussion of low (b)(2) is provided for information only, as DON activities may not invoke the low (b)(2). Low (b)(2) records are those matters which 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.

c. 5 U.S.C. 552 (b)(3): Those concerning matters that a statute specifically exempts from disclosure by terms that permit no discretion on the issue, or in accordance with criteria established by that statute for withholding or referring to particular types of matters to be withheld. A few examples of (b)(3) statutes are:

(1) 10 U.S.C. 128, Physical Protection of Special Nuclear Material, Limitation on Dissemination of Unclassified Information

(2) 10 U.S.C. 130, Authority to Withhold From Public Disclosure Certain Technical Data

(3) 10 U.S.C. 1102, Confidentiality of Medical Quality Assurance Records

(4) 10 U.S.C. 2305(g), Protection of Contractor Submitted Proposals

(5) 12 U.S.C. 3403, Confidentiality of Financial Records.

(6) 18 U.S.C. 798, Communication Intelligence

(7) 35 U.S.C. 181-188, Patent Secrecy - any records containing information relating to inventions that are the subject of patent applications on which Patent Secrecy Orders have been issued.

(8) 35 U.S.C. 205, Confidentiality of Inventions Information.

(9) 41 U.S.C. 423, Procurement Integrity

(10) 42 U.S.C. 2162, Restricted Data and Formerly Restricted Data

(11) 50 U.S.C. 403 (d)(3), Protection of Intelligence Sources and Methods

d. 5 U.S.C. 552 (b)(4): Those containing trade secrets or commercial or financial information that a DON activity 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. If the information qualifies as exemption (b)(4) information, there is no discretion in its release. Examples include:

(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 DON activity 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. Additionally, when the provisions of 10 U.S.C. 2305(g) and 41 U.S.C. 423 are met, certain proprietary and source selection information may be withheld under exemption (b)(3).

(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.

(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.

(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 DON.

(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.

(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 and DoD Federal Acquisition Regulation Supplement (DFARS), chapter 2 of 48 C.F.R., subpart 227.71-227.72. Technical data developed exclusively with Federal funds may be withheld under Exemption (b)(3) if it meets the criteria of 10 U.S.C. 130 and DoD Directive 5230.25 of 6 November 1984.

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

(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.

e. 5 U.S.C. 552 (b)(5): Those containing information considered privileged in litigation, primarily under the deliberative process privilege. For example: 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 or within or among DON activities. 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. Examples of the deliberative process include:

(1) The nonfactual portions of staff papers, to include after-action reports, lessons learned, and situation reports containing staff evaluations, advice, opinions, or suggestions.

(2) Advice, suggestions, or evaluations prepared on behalf of the DON 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.

(3) Those non-factual portions of evaluations by DON personnel of contractors and their products.

(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.

(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.

(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 DON activities, when these records have traditionally been treated by the courts as privileged against disclosure in litigation.

(7) Planning, programming, and budgetary information that is involved in the defense planning and resource allocation process.

(8) 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.

(9) 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.

(10) 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.

(11) 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.

f. 5 U.S.C. 552 (b)(6): 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 (b)(6) information, there is no discretion in its release. Examples of other files containing personal information similar to that contained in personnel and medical files include:

(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.

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

(3) Home addresses, including private e-mail addresses, are normally not releasable without the consent of the individuals concerned. This includes lists of home addressees and military quarters' addressees without the occupant's name. Additionally, the names and duty addresses (postal and/or e-mail) of DON/DoD military and civilian personnel who are assigned *to units that are sensitive, routinely deployable, or stationed in foreign territories can constitute a clearly unwarranted invasion of personal privacy.

(4) Privacy Interest. 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.

(5) 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.

(6) 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 of 28 October 1996 (NOTAL).

(7) 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.

(8) 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, DON activities shall neither confirm nor deny the existence or nonexistence of the record being requested. This is a Glomar response, and exemption (b)(6) must be cited in the response. Additionally, in order to insure personal privacy is not violated during referrals, DON activities shall coordinate with other DON activities or Federal agencies before referring a record that is exempt under the Glomar concept.

(a) 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.

(b) Refusal to confirm or deny should not be used when the person whose personal privacy is in jeopardy has provided the requester a waiver of his or her privacy rights; the person initiated or directly participated in an investigation that led to the creation of an agency record seeks access to that record; or 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.

f. 5 U.S.C. 552(b)(7). Records or information compiled for law enforcement purposes; i.e., civil, criminal, or military law, including the implementation of Executive Orders or regulations

issued under 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 (b)(7) (C) and (b)(7)(F), this exemption is discretionary. This exemption applies, however, only to the extent that production of such law enforcement records or information could result in the following:

(1) **5 U.S.C. 552(b)(7)(A)**: Could reasonably be expected to interfere with enforcement proceedings;.

(2) **5 U.S.C. 552(b)(7)(B)**: Would deprive a person of the right to a fair trial or to an impartial adjudication;

(3) **5 U.S.C. 552(b)(7)(C)**: 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.

(a) 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 (b)(7)(C) must be cited in the response. Additionally, in order to insure personal privacy is not violated during referrals, DON activities shall coordinate with other DON/DoD activities or Federal Agencies before referring a record that is exempt under the Glomar concept. 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.

(b) Refusal to confirm or deny should not be used when the person whose personal privacy is in jeopardy has provided the requester with a waiver of his or her privacy rights; or the person whose personal privacy is in jeopardy is deceased, and the activity is aware of that fact.

(4) **5 U.S.C.552 (b)(7)(D)**: Could reasonably be expected

to disclose the identity of a confidential source, including a source within the DON; 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) **5 U.S.C. 552(b)(7)(E)**: 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.

(6) **5 U.S.C. 552(b)(7)(F)**: Could reasonably be expected to endanger the life or physical safety of any individual.

(7) Some examples of exemption 7 are: 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; the identity of firms or individuals being investigated for alleged irregularities involving contracting with the DoD when no indictment has been obtained nor any civil action filed against them by the United States; information obtained in confidence, expressed or implied, in the course of a criminal investigation by a criminal law enforcement agency or office within a DON activity or a lawful national security intelligence investigation conducted by an authorized agency or office within the DON; national security intelligence investigations include background security investigations and those investigations conducted for the purpose of obtaining affirmative or counterintelligence information.

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

(9) **Exclusions**. Excluded from the above exemption are the below two situations applicable to the DON:

(a) 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, DON activities 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.

(b) Whenever informant records maintained by a criminal law enforcement organization within a DON activities under the informant's name or personal identifier are requested by a third party using the informant's name or personal identifier, the DON activity 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), the response to the requester will state that no records were found.

(c) DON activities considering invoking an exclusion should first consult with the DOJ's Office of Information and Privacy.

g. 5 U.S.C. 552 (b)(8): 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.

h. 5 U.S.C. 552 (b)(9): Those containing geological and geophysical information and data (including maps) concerning wells.

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					*
b. REVIEW/EXCISING		X	$12.00	=	**
c. CORRESPONDENCE AND FORMS PREPARATION					
d. OTHER ACTIVITY					
5. PROFESSIONAL HOURS *(O-1 - O-6/GS-9 - GS-15)*	TOTAL HOURS (1)		HOURLY RATE (2)		COST (3)
a. SEARCH					*
b. REVIEW/EXCISING		X	$25.00	=	**
c. COORDINATION/APPROVAL/DENIAL					
d. OTHER ACTIVITY					
6. EXECUTIVE HOURS *(O-7 - GS-16/ES 1 and above)*	TOTAL HOURS (1)		HOURLY RATE (2)		COST (3)
a. SEARCH					*
b. REVIEW/EXCISING		X	$45.00	=	**
c. COORDINATION/APPROVAL/DENIAL					
7. COMPUTER SEARCH	TOTAL HOURS (1)		HOURLY RATE (2)		COST (3)
a. MACHINE HOURS					*
b. PROGRAMMER/OPERATOR TIME		X		=	[illegible]
(1) Clerical			$12.00		*
(2) Professional			$25.00		*
8. OFFICE COPY REPRODUCTION	NUMBER (1)		RATE (2)		COST (3)
a. PAGES REPRODUCED		X	.15	=	*
9. MICROFICHE REPRODUCTION	NUMBER (1)		RATE (2)		COST (3)
a. MICROFICHE REPRODUCED		X	.25	=	*
10. PRINTED RECORDS	TOTAL PAGES (1)		RATE (2)		COST (3)
a. FORMS					*
b. PUBLICATIONS		X	.02	=	*
c. REPORTS					*
11. COMPUTER COPY	NUMBER (1)		ACTUAL COST (2)		COST (3)
a. TAPE		X		=	*
b. PRINTOUT					*
12. AUDIOVISUAL MATERIALS	NUMBER (1)		ACTUAL COST (2)		COST (3)
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.

DD FORM 2086 (BACK), JUL 1997

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)* a. INITIAL ☐ b. APPEAL ☐		3. DATE COMPLETED *(YYYYMMDD)*	
4. CLERICAL HOURS *(E-9/GS-8 and below)*	TOTAL HOURS (1)		HOURLY RATE (2)	COST (3)
a. SEARCH				*
b. REVIEW/EXCISING		X	$13.25	= *
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				*
b. REVIEW/EXCISING		X	ACTUAL HOURLY RATE	= *
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				*
b. REVIEW/EXCISING		X	ACTUAL HOURLY RATE	= *
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			$ 2.50	*
b. ENGINEERING DATA *(Microfilm)*				
- Aperture cards				
-- Silver duplicate negative, per card		X	.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.

ANNUAL REPORT
FREEDOM OF INFORMATION ACT

REPORT CONTROL SYMBOL: DD-DA&M(A)1365

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

3. APPEAL DETERMINATIONS

a. TOTAL REQUESTS	b. GRANTED IN FULL	c. DENIED IN PART	d. DENIED IN FULL	e. "OTHER REASONS"	f. TOTAL ACTIONS

DD FORM 2564, AUG 1998 (EG) PREVIOUS EDITION IS OBSOLETE. Designed using Perform Pro, WHS/DIOR, Jul 98

Enclosure (7)

SECNAVINST 5720.42F
6 JAN 1999

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	

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), AUG 1998

ANNUAL FOIA REPORT INSTRUCTIONS

NOTE: Operational Aviation Squadrons and Units Afloat who have not received and/or responded to any FOIA Requests during the reporting period are exempt from this reporting requirement. Negative reports are not required.

1. Background

a. The Freedom of Information (FOIA) Annual Report is mandated by statute and must be reported on a fiscal year basis. It is designed to provide statistical information regarding the amount of time and monies expended by the DON in managing its FOIA program.

b. To ensure accurate and timely reporting, naval activities are encouraged to use Form DD 2086 [enclosure (5)], Form DD 2086-1 [enclosure (6)], the FOIA Case Worksheet [enclosure (9)], and the Annual Report Compilation Worksheet [enclosure (10)] to collect information as each FOIA request is processed, completed, and closed. Additionally, due to the magnitude of the statistical data required for reporting, naval activities are encouraged to maintain case processing data in an electronic environment (i.e., MS Access, MS Excel, Oracle, etc.) to allow for automated compilation of the required reporting elements.

2. Responsibility

a. DON Echelon 2 Initial Denial Authorities (IDAs) and CMC (ARAD) are responsible for ensuring that reports are collected from subordinate activities by 25 October following the close of the fiscal year reporting period.

b. Consolidated reports will then be submitted on the current edition of Form DD 2564 [enclosure (7)] by the Echelon 2 IDAs to the Head, DON PA/FOIA Policy Branch (N09B30), Chief of Naval Operations, 2000 Navy Pentagon, Washington, DC 20350-2000, no later than the following 10 November. In turn, N09B30 will submit a consolidated report to the Director, Freedom of Information and Security Review, DoD, by 30 November. The DON's consolidated report will be placed on the Navy's FOIA website.

c. All reporting activities shall ensure that the name of their FOIA coordinator or officer, complete postal service mailing address, telephone and telefax numbers (both commercial

and DSN), email address, and Internet FOIA website address are printed on a plain sheet of paper and attached to their report.

d. Questions about and/or assistance in preparing the report may be obtained by calling N09B30 at (202) 685-6545 or DSN 325-6545.

3. Report Control Symbol: DD-PA(A)1365 (5720), Freedom of Information Act Report to Congress.

4. Instructions for Completing Form DD 2564:

a. Initial Determinations (Note: Initial Privacy Act requests which are also processed as initial FOIA requests are to be reported in this report as "FOIA" requests and on the Annual Privacy Act Report as "Privacy Act" requests.

(1) Total Requests: Enter into block 1a the total number of FOIA requests completed during the fiscal year reporting period. (This number can include requests received in the previous reporting period but responded to in the current reporting period.)

(2) Granted in Full: Enter into block 1b the total number of completed FOIA requests that were granted in full during the fiscal year reporting period. (This may include requests granted in full by your activity but requiring additional action by another activity.)

(3) Denied in Part **(Only IDAs Will Report Here):** Enter into block 1c the number of completed FOIA requests that were denied in part based on one or more of the nine FOIA exemptions. **(DO NOT REPORT FEE WAIVER DENIALS HERE)**

(4) Denied in Full **(Only IDAs Will Report Here):** Enter into block 1d the number of completed FOIA requests that were denied in full based on one or more of the nine FOIA exemptions. **(DO NOT REPORT FEE WAIVER DENIALS HERE)**

(5) "Other Reasons": Enter into block 1e the total number of FOIA requests in which you were unable to provide all or part of the requested information for one or more of the "Other Reasons" described in paragraph 2b below.

(6) Total Actions: Enter into block 1f the total number of FOIA actions taken during the reporting period by summing the numbers contained in blocks 1b through 1e. (NOTE: This sum will be equal to or greater than the number contained in block 1a.

b. Denials/Other Reason Responses

(1) Exemptions Invoked on Initial Determinations **(Only IDAs Will Report Here)**: Enter into blocks 2a(b)(1) through 2a(b)(9) the number of times an exemption was claimed for each initial request that was denied in full or in part. Since more than one exemption may be claimed when responding to a single request, the sum of blocks 2a(b)(1) through 2a(b)(9) will be equal to or greater than the sum of 1c and 1d. [NOTE: Exemption (b)(7) is now broken down to its six subcategories (b)(7)(A) through (b)(7)(F)].

(2) "Other Reasons" claimed on Initial Determinations: The following describes the circumstances when a FOIA request is not processed due to "Other Reasons":

(a) No Records: Enter into block 2b(1) the number of times a reasonable search of files failed to identify records responsive to an initial FOIA request.

(b) Referrals: Enter into block 2b(2) the number of times a request was referred to another DON activity, DoD component, or Executive Branch Agency for action.

(c) Request Withdrawn: Enter into block 2b(3) the number of times a request was withdrawn by a requester.

(d) Fee-Related Reason: Enter into block 2b(4) the number of times a FOIA request could not be processed because the requester was unwilling to pay fees associated with the request, was past due in payment of fees from a previous request, or disagreed with the fee estimate.

(e) Records Not Reasonably Described: Enter into block 2b(5) the number of times a FOIA request could not be acted upon because a desired record had not been described with sufficient particularity to enable a knowledgeable DON official to locate it by conducting a reasonable search.

(f) Not a Proper FOIA Request for Some Other Reason: Enter into block 2b(6) the number of times the requester failed

unreasonably to comply with procedural requirements, other than those fee-related issues discussed in paragraph 2b(4) above, imposed by this instruction and/or other published rules or directives.

(g) Not an Agency Record: Enter into block 2b(7) the number of times a requester was provided a response indicating that the requested information was "not an agency record" within the meaning of the FOIA and this instruction.

(h) Duplicate Request: Enter into block 2b(8) the number of files closed because the requests were duplicative of other requests already completed or currently in process, and a response to the requester is unnecessary. (This number includes identical requests received via different means (e.g., electronic mail, facsimile, postal service /mail, courier) at the same or different times.)

(i) Other (Specify): Enter into block 2b(9) the number of times a FOIA request could not be processed because the requester did not comply with published rules, other than for those reasons described in paragraphs 2b(1) through 2b(8) above. A statement explaining how the requester failed to comply with published rules must be detailed on a plain sheet paper and attached to the Form DD 2564.

(j) Total: Enter into block 2b(10) the sum of blocks 2b(1) through 2b(9). This sum will be equal to or greater than the number reported in block 1e since more than one "Other Reason" may be claimed on a FOIA request.

c. (b)(3) Statutes Invoked on Initial Determinations (Only IDAs Will Report Here): Report here information about each statute cited to support a (b)(3) denial, in whole or in part, of a responsive document. Ensure that, when citing to a (b)(3) statute, you include the specific sections of the statute that are invoked. See enclosure (3) for a sampling of (b)(3) statutes. NOTE: The sum of the total number of instances in which (b)(3) statutes were invoked will be equal to or greater than the number contained in block 2a(b)(3).

(1) (b)(3) Statute Claimed: Enter into block 2.c under "(b)(3) STATUTE CLAIMED" the title of the (b)(3) statute claimed to support each (b)(3) exemption invoked in response to a FOIA request.

(2) Number of Times Statute Claimed: Enter into block 2c under "NUMBER OF INSTANCES" the number of times each (b)(3) statute is claimed.

(3) (b)(3) Statute Upheld in Court?: Enter into block 2c under "COURT-UPHELD? (Yes or No)" a notation as to whether the statute has been upheld in a court hearing.

(4) Description of Withheld Material: Enter into block 2c under "CONCISE DESCRIPTION OF MATERIAL WITHHELD" a detailed description of the material withheld in each instance of the statute's use.

d. Appeal Determinations (Only OGC and JAG Will Report Here)

(1) Total Requests: Enter into block 3a the total number of FOIA appeals completed during the fiscal year reporting period. (This number can include appeals received in the previous reporting period but responded to in the current reporting period.)

(2) Granted in Full: Enter into block 3b the total number of completed FOIA appeals that were granted in full during the fiscal year reporting period.

(3) Denied in Part: Enter into block 3c the number of completed FOIA appeals that were denied in part based on one or more of the nine FOIA exemptions. (DO NOT REPORT FEE WAIVER DENIALS HERE.)

(4) Denied in Full: Enter into block 3d the number of completed FOIA appeals that were denied in full based on one or more of the nine FOIA exemptions. (DO NOT REPORT FEE WAIVER DENIALS HERE.)

(5) "Other Reasons": Enter into block 3e the total number of FOIA appeals in which you were unable to provide all or part of the requested information for one or more of the reasons described in item 4b below.

(6) Total Actions: Enter into block 3f the total number of FOIA appeal actions taken during the reporting period by summing the numbers contained in blocks 3b through 3e. (NOTE: This sum will be equal to or greater than the number contained in block 3a.

e. Appeal Denials/Other Reason Responses (Only OGC and JAG Will Report Here)

(1) Exemptions Invoked on Appellate Determinations. Enter into blocks 4a(b)(1) through 4a(b)(9) 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 appeal, the sum of blocks 4a(b)(1) through 4a(b)(9) will be equal to or greater than the sum of 3c and 3d. (NOTE: Exemption (b)(7) is now broken down to its six subcategories (b)(7)(A) through (b)(7)(F)].

(2) "Other Reasons" claimed on Appellate Determinations: The following describes the circumstances when a FOIA appeal is not processed due to "Other Reasons":

(a) No Records: Enter into block 4b(1) the number of times a reasonable search of files failed to identify records responsive to a FOIA appeal.

(b) Referrals: Enter into block 4b(2) the number of times a FOIA appeal was referred to another DON activity, DoD component, or Executive Branch Agency for action.

(c) Request Withdrawn: Enter into block 4b(3) the number of times an appeal was withdrawn by an appellant.

(d) Fee-Related Reason: Enter into block 4b(4) the number of times a FOIA appeal could not be processed because the appellant was unwilling to pay fees associated with the appeal, was past due in payment of fees from a previous request/appeal, or disagreed with the fee estimate.

(e) Records Not Reasonably Described: Enter into block 4b(5) the number of times a FOIA request could not be acted upon because a desired record had not been described with sufficient particularity to enable a knowledgeable DON official to locate it by conducting a reasonable search.

(f) Not a Proper FOIA Request for Some Other Reason: Enter into block 4b(6) the number of times the appellant failed unreasonably to comply with procedural requirements, other than those fee-related issues discussed in paragraph 4b(4) above, imposed by this instruction and/or other published rules or directives.

(g) Not an Agency Record: Enter into block 4b(7) the number of times a requester was provided a response indicating that tne requested information was "not an agency record" within the meaning of the FOIA and this Instruction.

(h) Duplicate Appeal: Enter into block 4b(8) the number of files closed because the appeals were duplicative of another appeal already completed or currently in process, and a response to the appellant is unnecessary. (This number includes identical appeals received via different means (e.g., electronic mail, facsimile, postal service mail, courier) at the same or different times.)

(i) Other (Specify): Enter into block 4b(9) the number of times a FOIA appeal could not be processed because the appellant did not comply with published rules, other than for those reasons described in paragraphs 4b(1) through 4b(8) above. A statement explaining how the appellant failed to comply must be detailed on a plain sheet paper and attached to the Form DD 2564.

(j) Total: Enter into block 4b(10) the sum of blocks 4b(1) through 4b(9). This sum will be equal to or greater than the number reported in block 4e since more than one "Other Reason" may be claimed on a FOIA appeal.

(3) (b)(3) Statutes Invoked on Appellate Determinations: Report here information about each statute cited to support a (b)(3) denial, in whole or in part, of a responsive document on appeal. Ensure that, when citing to a (b)(3) statute, you include the specific sections of the statute that are invoked. NOTE: The sum of the total number of instances in which (b)(3) statutes were invoked will be equal to or greater than the number contained in block 4a(b)(3).

(a) (b)(3) Statute Claimed: Enter into block 4c under "(b)(3) STATUTE CLAIMED" the title of the (b)(3) statute claimed to support each (b)(3) exemption invoked in response to a FOIA appeal.

(b) Number of Times Statute Claimed: Enter into block 4c under "NUMBER OF INSTANCES" the number of times each (b)(3) statute is claimed.

(c) (b)(3) Statute Upheld in Court?: Enter into block 4c under "COURT-UPHELD? (Yes or No)" a notation as to whether the statute has been upheld in a court hearing.

(d) Description of Withheld Material: Enter into block 4c under "CONCISE DESCRIPTION OF MATERIAL WITHHELD" a detailed description of the material withheld in each instance of the statute's use.

f. Number and Median Age of Pending Initial Request Files. The median age of pending requests shall be calculated using the number of days from request receipt to the end of the reporting period.

(1) Example of Median Calculation: If given five cases aged 10, 25, 35, 65, and 100 days from date of receipt, the total number of requests pending is five and the median age is the middle number (not the average) in this set of numbers (i.e., "35"). NOTE: If the number of pending cases equals an even number, the median age is then the average of the two middle numbers.

(2) Mean (average) Values: If an activity believes that "average" (mean) processing time is a better measure of performance, that activity is encouraged to report the "mean" value as a separate attachment to the Form DD 2564. This report, however, does not negate the requirement to report the median value as well. However, the mean value will not be included in the consolidated DON report to DoD unless all Echelon 2 activities and CMC (ARAD) report it.

(3) Accuracy of Calculations: Activities must ensure the accuracy of calculations. As a backup, the raw data used to perform calculations should be recorded and preserved. This will enable recalculation of median and mean values as necessary. N09B30 or Echelon 2 activities may require subordinates to forward raw data, as deemed necessary and appropriate.

(4) Number of Initial FOIA Cases Pending:

(a) Enter into block 5a(1) the total number of open, pending initial FOIA requests on file with your activity at the start of the reporting period. (NOTE: The number of pending requests at the beginning of the current reporting period should be the same as the number of pending requests at the end of the previous reporting period).

(b) Enter into block 5a(2) the total number of open, pending initial FOIA requests on file with your activity at the end of the reporting period.

(5) Median Age of Pending Request Files:

(a) Enter into block 5b(1) the median age (in days, including holidays and weekends) of pending initial FOIA requests on file with your activity at the start of the reporting period. (NOTE: The median age of pending requests at the beginning of the current reporting period should be the same as the median age of pending requests at the end of the previous reporting period).

(b) Enter into block 5b(2) the median age (in days, including holidays and weekends) of pending initial FOIA requests on file with your activity at the end of the reporting period.

g. Total Number of Initial Requests Received During the Current Reporting Period. Enter into block 6 the total number of initial FOIA requests received during the current reporting period. (NOTE: This should not be the same number as that reported in block 1a which recorded the number of completed requests.)

h. Types of Initial Requests Processed and Median Age. Information is reported for three types of initial requests completed during the reporting period by type (simple, complex, and expedited processing). The following items of information are to be reported for each category of requests:

(1) Total Number of Initial Requests (Simple). Enter into block 7a under "TOTAL NUMBER OF CASES" the number of initial requests processed as "simple" and completed during the reporting period.

(2) Total Number of Initial Requests (Complex). Enter into block 7a under "TOTAL NUMBER OF CASES" the number of initial requests processed as "complex" and completed during the reporting period.

(3) Total Number of Initial Requests (Expedited Processing). Enter into block 7a under "TOTAL NUMBER OF CASES" the number of initial requests processed as "expedited processing" and completed during the reporting period.

(4) Median Age (Simple). Enter into block 7a under the heading "MEDIAN AGE (DAYS)" the median number of calendar days (including weekends and holidays) required to process those "Simple" requests completed during the reporting period.

(5) Median Age (Complex). Enter into block 7a under the heading "MEDIAN AGE (DAYS)" the median number of calendar days (including weekends and holidays) required to process those "Complex" requests completed during the reporting period.

(6) Median Age (Expedited Processing). Enter into block 7a under the heading "MEDIAN AGE (DAYS)" the median number of calendar days (including weekends and holidays) required to process those "Expedited Processing" requests completed during the reporting period.

i. FOIA Fees Collected From the Public. Enter into block 8 the total amount of FOIA processing fees collected from the public during the reporting period.

j. FOIA Program Costs

(1) Number of Full Time Staff: Enter into block 9a the number of personnel dedicated to working FOIA full time during the fiscal year, expressed in work-years (manyears).

(2) Salary Costs of Full Time Staff: Total the salary costs of each full time staff member reported in paragraph 9a. Military personnel salary costs will be calculated using the Composite Rate Chart prepared by DoD each fiscal year. Civilian personnel salary costs will be calculated using the OPM salary table for their grade with 16 percent added for benefits. NOTE: This figure will be used to calculate the Total Program Cost reported in block 9d of Form DD 2564.

(3) Number of Part Time Staff: Enter into block 9b the number of work-years (manyears) for part-time staff and incidental hourly personnel utilized for FOIA processing during the fiscal year. One work-year (manyear) is comprised of 2,080 hours. See sample table in paragraph 9e below.

(4) Salary Costs of Part Time Staff: Enter the total salary costs of part-time and incidental hourly personnel reported in paragraph 9c. Part-time employee salary costs will be calculated using the Composite Rate Chart for military personnel and the OPM salary table for their grade plus 16 percent for civilian employees. Incidental hourly employee

salary costs will be calculated by totaling items 4 through 7 from applicable Forms DD 2086 and DD 8086-1. For example: total search costs plus total review/excising costs plus total correspondence and forms preparation costs plus total coordination of approval/denial costs plus total other activity costs equals total incidental hourly employee salary costs (by hours) which are then translated to work-years. NOTE: This figure will be used to calculate the Total Program Cost reported in block 9d of Form DD 2564. See sample table in paragraph 9e below.

(5) Sample Table: A sample table to calculate hours and salaries for part-time and incidental hourly personnel follows:

Employee	# Hrs Worked	Work Years	Salary	Note
J.Q. Public		.33	$13,386.78	GS-9 paralegal working in legal office who dedicates 1/3 of his work hours daily to FOIA processing.
H.S. Student		.25	$4,640.87	GS-2 after-school, part-time employee working in FOIA office who dedicates 2 hours daily to FOIA processing.
CPL U.S. Marine		.25	$6,621.25	E-4 military enlisted working in mailroom who dedicates 1/4 of his work hours daily to FOIA processing.
RADM I.D. Authority		.01	$1,122.60	O-7 military officer IDA who dedicates 1 percent of his work hours daily to FOIA issues.
Incidental Hrs. (Clerical @ $12.00/hr)	7,180*	3.45	$86,160.00	**
Incidental Hrs. (Professional $25.00/hr)	13,693*	6.58	$342,325.00	**
Incidental Hrs. (Executive $45.00/hr)	987*	.47	$44,415.00	**

* NOTE: total search hours plus total review hours plus total correspondence preparation hours plus total coordination of approval/denial hours plus total other activity hours equals total incidental hours worked.

** NOTE: Indidental hours information taken from items 4 through 7 of Forms DD 2086 and DD 2086-1 for incidental employees who work FOIAs hourly by specific tasking.

(6) Estimated Litigation Costs: Enter into block 9c your best estimate of litigation costs for the fiscal year, both at the administrative and appellate levels.

(7) Total Cost of FOIA Program Operation: The total cost for FOIA program operation shall be determined as follows.

Step 1: Sum total costs calculated in paragraphs 9b, 9d, and 9f.

Step 2: Sum items 8 through 12 of applicable Forms DD 2086 and DD 2086-1.

Step 3: Add sums from steps 1 and 2. Multiply total by 25 percent to obtain overhead calculation.

Step 4: (OPTIONAL) Total of routine costs processed. Activities which process routine kinds of requests may find it economical to develop an average cost factor for processing repetitive routine requests, rather that tracking individual costs of each request processed. Care should be exercised so that routine request costs are comprehensive to include a 25 percent overhead.

Step 5: Enter into block 9d the sum of the totals for steps 1, 2, 3, and 4.

FOIA CASE WORKSHEET

CASE FILE NO: _____

1. ACTIONS TAKEN ON REQUEST: (Check all blocks that apply)

_____ Granted in Full

Other Reason(s) for Not Granting Request in Full:

(1) _____ No Records
(2) _____ Request Referred to Another Agency
(3) _____ Request Withdrawn
(4) _____ Not Processed for Fee Related Reason
(5) _____ Desired Records Not Reasonably Described
(6) _____ Not Proper FOIA Request For Some Other Reason (Requester failed unreasonably to comply with procedural requirements, other than those fee-related issues described above)
(7) _____ Not an Agency Record
(8) _____ Duplicate Request
(9) _____ Other (Specify) (FOIA request cannot be processed because the requester did not comply with published rules, other than those described above).
Specify reason: _____
_____
_____
(10) _____ Request Denied
_____ Denied in Part _____ Denied in Entirety

2. EXEMPTION(S) CLAIMED IN DENIAL LETTER (Check all that apply):

_____ (b)(1)	_____ (b)(7)(A)	_____ (b)(8)
_____ (b)(2)	_____ (b)(7)(B)	_____ (b)(9)
_____ (b)(3)	_____ (b)(7)(C)	
_____ (b)(4)	_____ (b)(7)(D)	
_____ (b)(5)	_____ (b)(7)(E)	
_____ (b)(6)	_____ (b)(7)(F)	

TOTAL EXEMPTIONS CLAIMED: _____

3. COMPLETE THE FOLLOWING IF YOU INVOKED EXEMPTION (b)(3) IN ITEM (2) ABOVE:

IDENTIFY EACH STATUTE(S) CLAIMED	STATUTE UPHELD IN COURT? (Y/N)	PRECISE DESCRIPTION OF DENIED INFORMATION (BY STATUTE)
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

4. REMARKS: _____
_____
_____
_____
_____
_____

ANNUAL REPORT COMPILATION WORKSHEET
(Reporting Period 1 Oct ___ through 30 Sep ___)

1. REQUEST DETERMINATIONS [Report in Block 1 of Form DD 2564]

a. TOTAL # OF COMPLETED REQUESTS	b. GRANTED IN FULL (TOTAL)	c. DENIED IN PART (TOTAL)	d. DENIED IN FULL (TOTAL)	e. OTHER REASONS (TOTAL)	f. TOTAL ACTIONS
					(SUM OF ITEMS 1b – 1.e)*

* NOTE: As more than one action may be taken on a single request, this number will be greater than or equal to the number reflected in item 1a.

2. EXEMPTIONS [Report in Block 2a of Form DD 2564]

(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)

Total Exemptions*

* NOTE: This total will be equal to or greater than the sum of items 1c and 1d.

3. (b)(3) STATUTES [Report in Block 2c of Form DD 2564]

List the following information for every (b)(3) statute used to substantiate a denial. Note: Only statutes provided in the (b)(3) Statutes list compiled by DoD each year may be reported.

(b)(3) statute claimed	Number of Instances	Court Upheld? Yes/No	Description of Material Denied

4. OTHER REASONS [Report in Block 2b of Form DD 2564]

a. No Records	b. Referred	c. Withdrawn	d. Not processed (fee related)

e. Not processed (records description)	f. Not proper FOIA request (reason other than fees)	g. Not agency record

h. Duplicate Record	i. Other*

* NOTE: Specify the reason for every instance in which a request could not be processed because the requester did not comply with published rules, other than for those reasons stated in items 4(a) through 4(h) above.

5. Number and Median Age of Initial Cases Pending [Report in Block 5 of Form DD 2564]

a. Number of FOIA requests pending at beginning of reporting period:* _____

* (NOTE: This number should be the same as the number of pending FOIA requests at the end of the previous reporting period)

b. Number of FOIA requests pending at end of reporting period: _____

6. TOTAL NUMBER OF FOIA REQUESTS RECEIVED DURING THE REPORTING PERIOD [Report in Block 6 of Form DD 2564]

_____ Note that this number reflects the number of new requests received in the reporting period, not the number of request files completed which was reported in item 1a.)

NOTE: Please complete the following calculation at this time:

NEW REQUESTS (Reported in Block 6) **plus OPEN REQUESTS AT BEGINNING OF THE REPORTING PERIOD** (Reported in Block 5a) **equals "X"**

" X" minus OPEN REQUESTS AT END OF REPORTING PERIOD (Reported in Block 5b) **equals NUMBER OF REQUESTS PROCESSED** (Reported in Block 1a).

If the above does not calculate, there is an error in your data. You must go back and double check your numbers.

7. TYPES OF REQUESTS PROCESSED AND MEDIAN AGE [Report in Block 7 of Form DD 2564]

Type of request Processed	Number of cases	Median Age (days)
a. Simple		
b. Complex		
c. Expedited Processing		

NOTE: THE SUM OF 7a, 7b, and 7c must equal that reported in Block 1a.

8. TOTAL AMOUNT OF FEES COLLECTED FROM THE PUBLIC DURING THE REPORTING PERIOD [Report in Block 8 of Form DD 2564]

$ _____

9. PROGRAM COSTS

a. _____ Number of full time staff (this category includes all civilian and military whose billets or positions are dedicated solely to the purpose of FOIA processing and/or administration. REPORT IN BLOCK 9a OF FORM DD 2564.

b. _____ Number of part time staff (this category includes all civilian and military who routinely dedicate a part of their working hours to FOIA processing and/or administration, including those personnel who are randomly involved in FOIA processing/ administration on a case-by-case basis.) REPORT IN BLOCK 9b OF FORM DD 2564.

c. $_____ Estimated litigation costs for reporting period. REPORT IN BLOCK 9c OF FORM DD 2564.

d. $_____ Total Program Costs [Sum of items 9d(1), 9d(2), 9d(3), and 9d(4) below]. REPORT IN BLOCK 9d of FORM DD 2564.

(1) $_____ Total Salary Costs [Sum of items (a) and (b) below].

(a) $_____ Total salary costs of full time staff. Use charts below to calculate.

Full time military personnel

Name	Rate/Rank	Yearly salary from composite rate chart

Full time civilian personnel

Name	Grade	Yearly salary from OPM salary chart plus 16%

(b) $_____ Total salary costs of part-time staff. Use charts below to calculate. (This includes incidental hourly personnel who randomly work on FOIA processing or administration on a case-by-case basis.) Use charts below to calculate.

Part-time military personnel

Name	Rate/Rank	Yearly salary from composite rate chart	% of time on FOIA	Part-time Salary

Part-time civilian personnel

Name	Grade	Yearly salary from OPM chart plus 16%	% of time on FOIA	Part-time Salary

Incidental personnel (hourly rates from items (4) through (7) of Forms DD 2086 and DD 2086-1)

Personnel category	Hourly Rate		Number of Hours		Incidental Salary
Clerical	$12.00	X		=	
Professional	$25.00	X		=	
Executive	$45.00	X		=	
Computer search (machine)					
Computer programmer/ operator time (clerical)	$12.00	X		=	
Computer programmer/ operator time (professional)	$25.00	X		=	

Enclosure (10)

(2) $_____ Total reproduction and other related costs [Items (8) through (12) from Forms DD 2086 and DD 2086-1).

(3) $_____ Overhead [Multiply the sum items 9d(1) and 9d(2) by 25%]

(4) $_____ Cost of routine requests (OPTIONAL)