

APPENDIX F TO PART 286—ANNUAL REPORT  
FREEDOM OF INFORMATION ACT  
APPENDIX G TO PART 286—DoD FREEDOM OF  
INFORMATION ACT PROGRAM COMPONENTS

AUTHORITY: 5 U.S.C. 552.

SOURCE: 62 FR 35351, July 1, 1997, unless otherwise noted.

### Subpart A—General Provisions

#### § 286.1 Purpose and applicability.

(a) *Purpose.* This part provides policies and procedures for the DoD implementation of the Freedom of Information Act (5 U.S.C. 552) and DoD Directive 5400.7,<sup>1</sup> and promotes uniformity in the DoD Freedom of Information Act (FOIA) Program.

(b) *Applicability.* This part applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Inspector General of the Department of Defense (IG DoD), the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as “the DoD Components”). This part takes precedence over all DoD Component publications that supplement and implement the DoD FOIA Program. A list of DoD Components is at appendix G to this part.

#### § 286.2 Public information.

(a) The public has a right to information concerning the activities of its Government. DoD policy is to conduct its activities in an open manner and provide the public with a maximum amount of accurate and timely information concerning its activities, consistent always with the legitimate public and private interests of the American people. A record requested by a member of the public who follows rules established by proper authority in the Department of Defense shall not be withheld in whole or in part unless the record is exempt from mandatory partial or total disclosure under the FOIA. As a matter of policy, DoD Components shall make discretionary disclosures of exempt records or information whenever disclosure would not foreseeably

harm an interest protected by a FOIA exemption, but this policy does not create any right enforceable in court. In order that the public may have timely information concerning DoD activities, records requested through public information channels by news media representatives that would not be withheld if requested under the FOIA should be released upon request. Prompt responses to requests for information from news media representatives should be encouraged to eliminate the need for these requesters to invoke the provisions of the FOIA and thereby assist in providing timely information to the public. Similarly, requests from other members of the public for information that would not be withheld under the FOIA should continue to be honored through appropriate means without requiring the requester to invoke the FOIA.

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

(c) DoD Components shall also prepare, in addition to normal FOIA regulations, a handbook for the use of the public in obtaining information from their organization. This handbook should be a short, simple explanation to the public of what the FOIA is designed to do, and how a member of the public can use it to access government records. Each DoD Component should explain the types of records that can be obtained through FOIA requests, why some records cannot, by law, be made available, and how the DoD Component

<sup>1</sup>Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22121.

determines whether the record can be released. The handbook should also explain how to make a FOIA request, how long the requester can expect to wait for a reply, and explain the right of appeal. The handbook should supplement other information locator systems, such as the Government Information Locator Service (GILS), and explain how a requester can obtain more information about those systems. The handbook should be available on paper and through electronic means, and identify how a requester can access DoD Components' Freedom of Information Act Annual Reports. Similarly, the DoD Components' Freedom of Information Act Annual Reports should refer to the handbook and how to obtain it.

(d) *Control system.* A request for records that invokes the FOIA shall enter a formal control system designed to ensure accountability and compliance with the FOIA. Any request for DoD records that either explicitly or implicitly cites the FOIA shall be processed under the provisions of this part, unless otherwise required by § 286.4(m).

### § 286.3 Definitions.

As used in this part, the following terms and meanings shall be applicable.

*Administrative appeal.* A request by a member of the general public, made under the FOIA, asking the appellate authority of a DoD Component to reverse a decision to: withhold all or part of a requested record; deny a fee category claim by a requester; deny a request for expedited processing due to demonstrated compelling need under § 286.4(d)(3); deny a request for 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.

*Agency record.* (1) The products of data compilation, such as all books, papers, maps, and photographs, machine readable materials, inclusive of those in electronic form or format, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government under Federal law in connection with the transaction of public business and in Department of Defense possession and control at the

time the FOIA request is made. Care should be taken not to exclude records from being considered agency records, unless they fall within one of the categories of paragraph (2) of this definition.

(2) The following are not included within the definition of the word "record".

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

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

(iii) Personal records of an individual not subject to agency creation or retention requirements, created and maintained primarily for the convenience of an agency employee, and not distributed to other agency employees for their official use. Personal papers fall into three categories: those created before entering Government service; private materials brought into, created, or received in the office that were not created or received in the course of transacting Government business; and work-related personal papers that are not used in the transaction of Government business (see "Personal Papers of Executive Branch Officials: A Management Guide," National Archives and Records Administration, Office of Records Administration, Washington, DC, 1992<sup>2</sup>).

(3) A record must exist and be in the possession and control of the Department of Defense at the time of the request to be considered subject to this part and the FOIA. There is no obligation to create, compile, or obtain a record to satisfy a FOIA request. See § 286.4(g)(2) creating a record in the electronic environment.

(4) Hard copy of electronic records, that are subject to FOIA requests under 5 U.S.C. 552(a)(3), and that are available to the public through an established distribution system, or through the FEDERAL REGISTER, the National Technical Information Service, or the Internet, normally need not

<sup>2</sup> Available from the Records Administration Center, Agency Services Division (NIA), Washington, DC 20408.