

§ 290.5

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under established procedures and practices.

[56 FR 49685, Oct. 1, 1991, as amended at 60 FR 35699, July 11, 1995; 64 FR 1130, Jan. 8, 1999]

§ 290.5 Definitions.

The terms used in this rule with the exception of the following are defined in DCAAP 5410.14.

(a) *Initial denial authorities (IDAs)*. The regional directors, and the Chief, Administrative Management Division, have been delegated the authority by the Director, DCAA, to make initial determinations as to the releasability of DCAA records to the public, including Defense contractors. This authority may not be redelegated.

(b) *Appellate authority*. The Assistant Director, Resources, or his designee.

(c) *Electronic data*. Electronic data are those records and information which are created, stored, and retrievable by electronic means. This does not include computer software, which is the tool by which to create, store, or retrieve electronic data.

(d) *FOIA request*. A written request for DCAA records, made by any person, including a member of the public (U.S. or foreign citizen), an organization, or a business, but not including a Federal agency or a fugitive from the law that either explicitly or implicitly invokes the FOIA, DoD 5400.7-R, DCAAR 5410.8,⁴ or regional instruction on the FOIA.

(e) *Administrative appeal*. A request by a member of the general public, made under the FOIA, asking the appellate authority to reverse an IDA decision to withhold all or part of a requested record or to deny a request for waiver or reduction of fees.

[56 FR 49685, Oct. 1, 1991, as amended at 64 FR 1130, Jan. 8, 1999]

§ 290.6 Responsibilities.

(a) *Headquarters*. (1) The Assistant Director, Resources is responsible for:

(i) The overall Agency-wide administration of the DCAA FOIA Program through the Chief, Administrative Management Division, Information and Privacy Advisor, to ensure compliance with the policies and procedures that govern the program.

(ii) Acting as the designee for the Director, DCAA, serving as the sole appellate authority for appeals to decisions of respective IDAs.

(iii) Advising the Assistant Secretary of Defense (Public Affairs) (ASD(PA)) of cases of public interest, particularly those on appeal, when the issues raised are unusual or precedent setting, matters of disagreement among DoD components, are of concern to agencies outside the Department of Defense, or may otherwise require special attention or guidance.

(iv) Advising the ASD(PA) and the Executive Officer, DCAA, concurrent with the denial of a request or an appeal, when circumstances suggest a news media interest.

(v) Conferring with the General Counsel; the Assistant Director, Operations; and the Assistant Director, Policy and Plans, on the desirability of reconsidering a final decision to deny a record, if that decision becomes a matter of special concern because it involves either an issue of public concern or DoD-wide consequences.

(vi) Accomplishing program overview, in cooperation with the General Counsel, to ensure coordinated guidance to components, and to provide the means of assessing the overall conduct of the Agency's FOIA Program.

(vii) Responding to corrective action recommended by the Special Counsel of the Merit Systems Protection Board for arbitrary or capricious withholding of records by designated employees of the Agency.

(2) The Chief, Administrative Management Division (CM) is responsible for:

(i) Establishing, issuing, and updating policies for the DCAA FOIA Program; monitoring compliance with this rule; and providing policy guidance for the FOIA program.

(ii) Resolving conflicts that may arise regarding implementation of DCAA FOIA policy.

(iii) Designating an Agency FOIA Advisor, as a single point of contact, to coordinate on matters concerning Freedom of Information Act policy.

(3) The DCAA Information and Privacy Advisor, under the supervision

⁴See footnote 3 to § 290.4(c).

and guidance of the Chief, Administrative Management Division is responsible for:

(i) Managing the DCAA FOIA Program in accordance with this rule, DCAAP 5410.14, applicable DCAA policies as well as DoD and Federal regulations.

(ii) Providing guidelines for managing, administering, and implementing the DCAA FOIA program. This would include issuing the DCAA FOIA rule, developing and conducting training for those individuals who implement the FOIA, and publishing in the FEDERAL REGISTER any instructions necessary for the administration of the FOIA program. This also includes serving as the informational point of contact for regional FOIA coordinators.

(iii) Maintaining and publishing DCAA Pamphlet 5410.14, "DCAA Freedom of Information Act Processing Guide".

(iv) Preparing the Annual Freedom of Information Report to Congress as required by DoD 5400.7-R.

(v) Establishing and maintaining a control system for assigning FOIA case numbers to FOIA requests received by Headquarters and regional offices.

(vi) Maintaining a record of FOIA requests received by Headquarters. This record is to contain the requester's identification, the date of the request, type of information requested, and type of information furnished. This record will be maintained and disposed of in accordance with DCAA records maintenance and disposition regulations and schedules.

(vii) Making available for public inspection and copying in an appropriate facility or facilities, in accordance with rules published in the FEDERAL REGISTER the records specified in paragraph (a)(2) of 5 U.S.C. 552, unless such records are published and copies are offered for sale. Maintain and make available for public inspection and copying current indices of these records.

(4) Heads of Principal Staff Elements are responsible for:

(i) Reviewing all regulations or other policy and guidance issuances for which they are the proponent to ensure

consistency with the provisions of this rule.

(ii) Ensuring that the provisions of DCAAP 5410.14 and this rule are followed in processing requests for records.

(iii) Forwarding to the DCAA Information and Privacy Advisor, any FOIA requests received directly from a member of the public so that the request may be administratively controlled and processed.

(iv) Ensuring the prompt review of all FOIA requests, and when required, coordinating those requests with other organizational elements.

(v) Providing recommendations regarding the releasability of DCAA records to members of the public, along with the responsive documents.

(vi) Providing the appropriate documents, along with a written justification for any denial, in whole or in part, of a request for records. Those portions to be excised should be bracketed in red pencil, and the specific exemption or exemptions cited which provide the basis for denying the requested records.

(vii) Ensuring that documents are marked FOUO at the time of their creation if information contained within is considered exempt from disclosure.

(5) The General Counsel is responsible for:

(i) Ensuring uniformity is maintained in the legal position, and the interpretation of the Freedom of Information Act, DoD 5400.7-R, and this rule.

(ii) Consulting with General Counsel, DoD on final denials that are inconsistent with decisions of other DoD components, involving issues not previously resolved, or raise new or significant legal issues of potential significance to other Government agencies.

(iii) Providing advice and assistance to the Assistant Director, Resources; Regional Directors; and the Regional FOIA Coordinators, through the DCAA Information and Privacy Advisor, as required, in the discharge of their responsibilities.

(iv) Coordinating Freedom of Information Act litigation with the Department of Justice.

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(v) Coordinating on Headquarters denials of initial requests and administrative appeals.

(vi) Ensuring that documents are marked FOUO at the time of their creation if information contained within is considered exempt from disclosure.

(6) The Executive Officer shall serve as the coordinator for the release of information to the news media.

(b) Each Regional Director is responsible for the overall management of the Freedom of Information Act program within his respective region. Under his direction, the Regional Resources Manager is responsible for the management and staff supervision of the program and for designating a regional FOIA Coordinator.

(1) Regional Directors are responsible for:

(i) Implementing and administering the Freedom of Information Act program throughout the region.

(ii) Making the initial determination pertaining to the releasability of DCAA records to members of the public. This authority cannot be delegated.

(iii) Delegating signature authority for FOIA correspondence which is considered only to be routine in nature, e.g., referrals and the release of information.

(iv) Ensuring that documents are marked FOUO at the time of their creation if information contained within is considered exempt from disclosure.

(2) FOIA Coordinators are responsible for:

(i) Issuing regional instructions that are consistent with the policies and procedures defined in DCAAP 5410.14 and this rule.

(ii) Conducting training on the FOIA program to the FAOs.

(iii) Submitting a DCAA Form 5410-4, "Freedom of Information Case Summary", to the DCAA Information and Privacy Advisor at the completion of each FOIA case to facilitate the preparation of the annual FOIA report to Congress. All case summaries must be submitted no later than October 10th for cases completed during the previous fiscal year.

(iv) Establishing and maintaining a control system to ensure proper accountability and processing of FOIA requests.

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(v) Contacting the DCAA Information and Privacy Act Advisor for a FOIA case number upon receipt of a FOIA request.

(c) Managers, Field Audit Offices (FAOs) are responsible for:

(1) Overall management and administration of the FOIA program within organizations under their cognizance.

(2) Ensuring that the regional FOIA Coordinator promptly receives all incoming FOIA requests. Use of facsimile transmission is appropriate for all requests received directly by the FAO.

(3) Ensuring that documents are marked FOUO at the time of their creation if information contained within is considered exempt from disclosure.

[56 FR 49685, Oct. 1, 1991, as amended at 64 FR 1130, Jan. 8, 1999]

§ 290.7 Procedures.

(a) Procedures for processing material in accordance with the FOIA are outlined in DCAAP 5410.14. General provisions are outlined in the following paragraphs.

(b) *Requests for audit reports.* Audit reports prepared by DCAA are the property of and are prepared for the use of DoD contracting officers. As a result, their release should be at the sole discretion of the DoD contracting activity. Requesters seeking audit reports should send their requests directly to the DoD contracting activity to avoid administrative delay. Typically, requests for copies of DCAA audit reports may be identified by requesting those that relate to a specific contract number (e.g. DLA600-89-P0222). DoD contract numbers may be easily matched to the cognizant DoD contracting activity by referring to 48 CFR, "DoD FAR Supplement" Appendix G.

NOTE: Although DCAA can make a release determination on audit reports produced for non-DoD agencies, administrative procedure routinely dictates coordination with that agency prior to responding to the request. Requesters seeking expeditious processing should forward their requests directly to the cognizant contracting officer for processing.

(c) *Requests for audit working papers.* Audit working papers, as described in appendix D, may be sought occasionally in conjunction with an audit report or as an independent demand. Normally, the release of such records is entirely dependent on the releasability of