must provide PAO a written recommendation with the appropriate exemption(s) (§291.8) and detailed reasons for withholding the information. Upon PAO request, the technical office(s) will sanitize the unclassified information that is being withheld. Sanitization will be done on a photocopy of the document or on a document that has been obtained from DTIC.

**§291.7 Administrative instruction.**

(a) FOIA requesters shall clearly mark their requests as such, both on the envelope and in the body of the letter. Identification of the record desired is the responsibility of the FOIA requester. The requester must provide a description of the desired record that enables DNA to locate it with a reasonable amount of effort. The Act does not authorize ''fishing expeditions.'' FOIA requests should be sent to the following address: Public Affairs Officer, Defense Nuclear Agency, Attention: FOIA, 6801 Telegraph Road, Alexandria, VA 22310–3398. Requester failure to comply with this section shall not be sole grounds of denial for requested information.

(b) FOIA appeals must be clearly marked as such, both on the envelope and in the body of the letter. Persons appealing DNA denial letters should include a copy of the denial letter, the case number, a statement of the relief sought and the grounds upon which it is brought. Appeals should be sent to the following address: Director, Defense Nuclear Agency, 6801 Telegraph Road, Alexandria, VA 22310–3398.

(c) The time limitations for responding to legitimate FOIA requests are:

(1) Determinations to release, deny or transfer a record shall be made and the decision reported to the requester within 10 working days after the request is received in PAO.

(2) If additional time is needed to respond to a request, the requester will be notified within the 10-day period. When PAO has a significant number of requests, e.g., 10 or more, the requests shall be processed in order of receipt. However, this does not preclude PAO from completing action on a request which can be easily answered, regardless of its ranking within the order of receipt. PAO may expedite action on a request regardless of its ranking within the order of receipt upon a showing of exceptional need or urgency. Exceptional need or urgency is determined at the discretion of the Public Affairs Officer.

(3) If a request for a record is denied and the requester appeals the decision of the IDA, the requester should file the appeal so that it reaches DNA no later than 60 calendar days after the date of the initial denial letter. At the conclusion of this period, the case may be considered closed; however, such closure does not preclude the requester from filing litigation. In cases where the requester is provided several incremental determinations for a single request, the time for the appeal shall not begin until the requester receives the last such notification. A final determination on the appeal normally shall be made within 20 working days after receipt. 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 utilized as additional time for responding to the initial request. If an appeal is denied, the Director, DNA, will notify the requester of the right to judicial review of the decision. Appeal procedures also apply to the disapproval of a request for waiver or reduction of fees.

(d) If DNA denies the requested document in whole or in part, the response must include detailed rationale for withholding information and the specific exemption that applies so the requester can make a decision concerning appeal. When the initial denial is based in whole or in part on a security classification, the explanation should include a summary of the applicable criteria for classification, as well as an explanation, to the extent reasonably feasible, of how those criteria apply to the particular record in question. Denial letters must also include the name and title of the IDA, and cite the name and address of the Director, DNA, as the appellate authority.

(e) All final responses will address the status of fees collectible under the FOIA. Fees of $15 or less will be waived, regardless of category of requester.

(f) A formal reading room for the public, as defined in 32 CFR part 286,

does not exist at DNA (HQ, FCDNA or AFRRI) because of security requirements. However, the PAO will arrange for a suitable location and escort, if required, for members of the public to review DNA documents released under the FOIA. In addition, most reports released under the FOIA are sent to the National Technical Information Service (NTIS).

**§ 291.8 Exemptions.**

(a) *General.* Records that meet the exemption criteria listed in paragraph (b) below may be withheld from public disclosure and will not be published in the FEDERAL REGISTER, made available in a library, reading room, or provided in response to a FOIA request.

(b) *FOIA exemptions.* The following types of records may be withheld in whole or in part from public disclosure under the FOIA, unless otherwise prescribed by law. A discretionary release (see also § 291.4(e)) to one requester may preclude the withholding of the same record under a FOIA exemption if the record is subsequently requested by someone else. 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.

(1) *Number 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, such as DoD 5200.1–R.[3] Although material is not classified at the time of the FOIA request, a classification review may be undertaken to determine whether the information should be classified. The procedures in DoD 5200.1–R, section 2–204f., apply. In addition, this exemption shall be invoked when the following situations are apparent:

(i) The fact of the existence or nonexistence of a record would itself reveal classified information. In this situation, DNA 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.

(ii) Information that concerns one or more of the classification categories established by executive order and DoD 5200.1–R shall be classified if its unauthorized disclosure, either by itself or in the context of other information, reasonably could be expected to cause damage to the national security.

(2) *Number 2.* Those related solely to the internal personnel rules and practices of DNA. This exemption has two profiles, high b2 and low b2.

(i) Records qualifying under high b2 are those containing or constituting statutes, rules, regulations, orders, manuals, directives, and instructions, the release of which would allow circumvention of these records, thereby substantially hindering the effective performance of a significant function of the DNA. Examples include:

(A) Those operating rules, guidelines and manuals for DNA investigators, inspectors, auditors, or examiners that must remain privileged in order for the DNA office to fulfill a legal requirement.

(B) Personnel and other administration 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 meeting the standards of paragraph 291.3(b)(2)(iii), the release of which would allow circumvention of a statute or DoD rules, regulations, orders, manuals, directives, or instructions. In this situation, the use of the software must be clearly examined to ensure a circumvention possibility exists.

(ii) Records qualifying under the low b2 profile are those that are trivial and housekeeping in nature for which there is no legitimate public interest or benefit to be gained by release, and it would constitute an administrative burden to process the request in order

[3] See footnote 1 to § 291.5(c)(9).