

§ 293.3 Scope.

This part does not apply to requests from members of Congress, who are governed by DoD Directive 5400.4¹ or from the General Accounting Office, which is governed by DoD Directive 7650.1.²

§ 293.4 Definitions.

(a) *FOIA record.* (1) The products of data compilation, such as all books, papers, maps, and photographs, machine readable materials or other documentary materials, regardless of physical form or characteristics, made or received by DMA in connection with the transaction of public business and in DMA's possession and control at the time of the FOIA request, are considered agency records. For items not considered an agency record, see paragraph 1-402 of DoD 5400.7-R.³

(2) Normally, computer software, including source code, object code, and listings of source and object codes, regardless of medium are not agency records. (See paragraph 1-402 of DoD 5400.7-R for a complete definition of an agency record.)

(3) If unaltered publications and processed documents, such as regulations, manuals, maps, charts and related geophysical materials, are available to the public through an established distribution system with or without charge, the provisions of 5 U.S.C. 552(a)(3) normally do not apply, and they need not be processed under the FOIA. Normally, documents disclosed to the public by publication in the FEDERAL REGISTER also require no processing under the FOIA. In such cases, the requester should be directed to the appropriate source to obtain the record.

(b) *FOIA request.* A FOIA request is a written request for DMA 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 law, that either explicitly or im-

plicitly invokes the FOIA, DoD Directive 5400.7,⁴ DoD 5400.7-R, or this part.

(c) *Pertinent records.* For the purpose of this part, records shall be considered pertinent if they concern either an individual who is, or foreseeably may become, involved in litigation involving the United States or a matter which is, or foreseeably may become, the subject of litigation involving the United States.

[56 FR 26614, June 10, 1991. Redesignated and amended at 56 FR 58179, Nov. 18, 1991; 56 FR 59217, Nov. 25, 1991]

§ 293.5 Policy.

(a) *Creating a record.* A record must exist and be in the possession and control of DMA at the time of a request to be charged for providing the existing record. (See paragraph 1-506 of DoD 5400.7-R.)

(b) *Public requests.* It is DMA policy to make available to the public the maximum amount of information concerning its operations and activities. Exemptions to this policy are stated in 5 U.S.C. 552 and DoD 5400.7-R. However, exempt records may be released to the public when their disclosure would not be inconsistent with the Privacy Act, DMA Instruction 5400.11,⁵ or any other statutory requirements, and when no legitimate government purpose would be served by withholding them. DoD 5400.7-R provides additional policy guidance regarding the release of DMA records.

(c) *News media requests.* Requests from news media for records that would not be withheld under FOIA shall be released promptly in order to provide timely information to the public and eliminate the need to invoke the provisions of FOIA.

(d) *Contract requests.* Guidance for the release of information received from a non-U.S. Government source is contained in paragraph 5-207 of DoD 5400.7-R.

(e) *Classified records.* If classified records are requested, see additional

¹Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161

²See footnote 1 to § 293.3

³See footnote 1 to § 293.3

⁴See footnote 1 to § 293.3

⁵Copies may be obtained by written request to the Defense Mapping Agency, Attn: AO (Stop A-2) 8613 Lee Highway, Fairfax, VA 22031-2138

guidance outlined in Chapter VII, DMA Manual 5200.1.⁶

(f) *FOUO records.* (1) Information that has not been given a security classification pursuant to the criteria of an Executive order, but which may be withheld from the public for one or more of the reasons cited in FOIA Exemptions 2 through 9 shall be considered as being for official use only. No other material shall be considered or marked FOR OFFICIAL USE ONLY (FOUO), and FOUO is not authorized as an anemic form of classification to protect national security interests.

(2) The prior application of FOUO markings is not a conclusive basis for withholding a record that is requested under FOIA. When such a record is requested, the information in it shall be evaluated to determine whether under current circumstances, FOIA exemptions apply in withholding the record or portions of it. If any exemption(s) apply, the record may be released when it is determined that no governmental interest will be jeopardized by its release.

(g) *Historical papers.* Records such as notes, working papers, and drafts retained as historical evidence of DoD component actions enjoy no special status apart from the exemptions under the FOIA.

(h) *Fees.* Chapter VI, DoD 5400.7-R, should be consulted before fees are assessed. Fee application is discussed in paragraph 6-101, fee restrictions in paragraph 6-102, fee waivers in paragraph 6-103 and fee assessment in paragraph 6-104.

[56 FR 26614, June 10, 1991. Redesignated and amended at 56 FR 58179, Nov. 18, 1991; 56 FR 59217, Nov. 25, 1991]

§ 293.6 Responsibilities.

(a) The Director, Public Affairs (DMA(PA)), is designated Freedom of Information Officer (FOIO) and is responsible for administering the FOIA program within DMA. The DMA(PA) is also denial authority for “no record” FOIAs. HQ DMA(PA) will:

(1) Receive, log, and determine administrative action required on all FOIA requests received at HQ DMA. If a record is held by DMA, the FOIO will

forward a copy of the FOIA request to the custodian of the record for comments regarding releasability of the requested record. Following receipt of the custodian's comments and a copy of the requested documents, FOIO will review the comments, make a preliminary releasability determination, and prepare the initial response with coordination by HQ DMA(GC). If it is apparent to the custodian that the material will be released, two copies of the requested record will be forwarded to HQ DMA(PA) (one for release and one for record keeping).

(2) Prepare DD Form 2564, “Annual Report—Freedom of Information Act,” and forward it to the Office of the Assistant Secretary of Defense (Public Affairs) (OASD(PA)), as directed.

(b) The Chief of Staff, the Deputy General Counsel and the DMA Freedom of Information of Information Act Officer (DMA(PA)) are delegated authority to initially deny release of DMA records. This denial authority is also delegated to Component Directors and Associate General Counsels (AGC) as follows:

(1) AGC AC for the DMA Aerospace Center (DMAAC).

(2) AGC HTC for the DMA Hydrographic/Topographic Center (DMAHTC), DMA Combat Support Center (DMACSC), and the Defense Mapping School (DMS).

(3) AGC SC—for the DMA Reston Center (DMARC), DMA Systems Center (DMASC), and DMA Technical Services Center (DMATSC).

(4) AGC(KL) (DMA Contract Law Office) for contract related issues.

This authority may not be redelegated. A copy of all Component denial letters will be forwarded to HQ DMA(GC).

(c) General Counsel:

(1) HQ DMA(GC) is responsible for all appeals to FOIA actions and will provide HQ DMA(PA) with a copy of the initial appeal letter and DMA's response to it. The DMA Deputy Director (DD) and HQ DMA(GC) are delegated authority to make final determinations on appeals in accordance with the provisions of section 3, chapter V of DoD 5400.7-R.

(2) Coordination with Department of Justice:

⁶See footnote 5 to § 293.5(b)